



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXXV
May 15, 2013

NUMBER 23
Pages 1699 to 1794

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PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

PLEASE NOTE: Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

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NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 19 '12	Jan. 9 '13	Jan. 29 '13	Feb. 13 '13	Feb. 15 '13	Mar. 6 '13	Apr. 10 '13	July 8 '13
Jan. 4	Jan. 23	Feb. 12	Feb. 27	Mar. 1	Mar. 20	Apr. 24	July 22
Jan. 18	Feb. 6	Feb. 26	Mar. 13	Mar. 15	Apr. 3	May 8	Aug. 5
Feb. 1	Feb. 20	Mar. 12	Mar. 27	Mar. 29	Apr. 17	May 22	Aug. 19
Feb. 15	Mar. 6	Mar. 26	Apr. 10	Apr. 12	May 1	June 5	Sep. 2
Mar. 1	Mar. 20	Apr. 9	Apr. 24	Apr. 26	May 15	June 19	Sep. 16
Mar. 15	Apr. 3	Apr. 23	May 8	May 10	May 29	July 3	Sep. 30
Mar. 29	Apr. 17	May 7	May 22	***May 22***	June 12	July 17	Oct. 14
Apr. 12	May 1	May 21	June 5	June 7	June 26	July 31	Oct. 28
Apr. 26	May 15	June 4	June 19	***June 19***	July 10	Aug. 14	Nov. 11
May 10	May 29	June 18	July 3	July 5	July 24	Aug. 28	Nov. 25
May 22	June 12	July 2	July 17	July 19	Aug. 7	Sep. 11	Dec. 9
June 7	June 26	July 16	July 31	Aug. 2	Aug. 21	Sep. 25	Dec. 23
June 19	July 10	July 30	Aug. 14	Aug. 16	Sep. 4	Oct. 9	Jan. 6 '14
July 5	July 24	Aug. 13	Aug. 28	***Aug. 28***	Sep. 18	Oct. 23	Jan. 20 '14
July 19	Aug. 7	Aug. 27	Sep. 11	Sep. 13	Oct. 2	Nov. 6	Feb. 3 '14
Aug. 2	Aug. 21	Sep. 10	Sep. 25	Sep. 27	Oct. 16	Nov. 20	Feb. 17 '14
Aug. 16	Sep. 4	Sep. 24	Oct. 9	Oct. 11	Oct. 30	Dec. 4	Mar. 3 '14
Aug. 28	Sep. 18	Oct. 8	Oct. 23	***Oct. 23***	Nov. 13	Dec. 18	Mar. 17 '14
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Dec. 4	Dec. 25	Jan. 14 '14	Jan. 29 '14	Jan. 31 '14	Feb. 19 '14	Mar. 26 '14	June 23 '14
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PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
25	Wednesday, May 22, 2013	June 12, 2013
26	Friday, June 7, 2013	June 26, 2013
1	Wednesday, June 19, 2013	July 10, 2013

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

DENTAL BOARD[650]

Delegation of expanded function duties to registered dental hygienists, 10.3(1) IAB 5/1/13 ARC 0722C	Suite D 400 SW 8th St. Des Moines, Iowa	June 5, 2013 4 p.m.
Temporary permit for volunteer services, 13.3(3), 15.3(17) IAB 5/1/13 ARC 0724C	Suite D 400 SW 8th St. Des Moines, Iowa	June 5, 2013 2 p.m.
Expanded function training approval, 20.15 IAB 5/1/13 ARC 0723C	Suite D 400 SW 8th St. Des Moines, Iowa	June 5, 2013 3 p.m.

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Out-of-state applicants who have attained national board certification, 13.3 IAB 5/1/13 ARC 0706C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 22, 2013 1 p.m.
Military exchange license, 13.17(4) IAB 5/1/13 ARC 0705C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 22, 2013 1 p.m.
Coaching endorsement and authorization—concussion training, 13.28(29), 22.1 IAB 5/1/13 ARC 0696C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 22, 2013 1 p.m.
Content specialist endorsement, 13.28(30) IAB 5/1/13 ARC 0700C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 22, 2013 1 p.m.
Content and competencies for administrator Class B licensure, 18.9, 18.10 IAB 5/1/13 ARC 0703C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 22, 2013 1 p.m.
Administrator Class E license, 18.12 IAB 5/1/13 ARC 0701C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 22, 2013 1 p.m.
Renewal of administrator license, 19.7 IAB 5/1/13 ARC 0702C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 22, 2013 1 p.m.
Renewal of school business official authorization, 22.3(7) IAB 5/1/13 ARC 0704C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 22, 2013 1 p.m.

EDUCATION DEPARTMENT[281]

Access to public benefits or insurance to pay for special education services, 41.154(4) IAB 4/17/13 ARC 0693C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	May 15, 2013 1 to 2 p.m.
	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	May 22, 2013 1 to 2 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Hazardous air pollutants—adoption by reference of federal RICE NESHAP standards, 23.1(4) IAB 5/15/13 ARC 0740C	Conference Rooms Air Quality Bureau Office 7900 Hickman Rd. Windsor Heights, Iowa	June 4, 2013 10 a.m.
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HUMAN SERVICES DEPARTMENT[441]

<p>Medicaid eligibility for family planning services, 75.1(41)“a” IAB 5/15/13 ARC 0746C</p>	<p>ICN Room Pottawattamie County DHS Office Western Service Area 417 E. Kanesville Blvd. Council Bluffs, Iowa</p>	<p>June 4, 2013 9 to 10 a.m.</p>
	<p>Room 1, River Place Des Moines Service Area 2309 Euclid Ave. Des Moines, Iowa</p>	<p>June 4, 2013 9 to 10 a.m.</p>
	<p>Administration Building Board Room First Floor Scott County DHS Office 600 W. 4th St. Davenport, Iowa</p>	<p>June 4, 2013 1:30 to 2:30 p.m.</p>
	<p>Fifth Floor ICN Room Iowa Building Cedar Rapids Service Area 411 3rd St. SE Cedar Rapids, Iowa</p>	<p>June 5, 2013 9:30 to 10:30 a.m.</p>
	<p>Room 220 Black Hawk County DHS Office 1407 Independence Ave. Waterloo, Iowa</p>	<p>June 6, 2013 10 to 11 a.m.</p>
<p>Integrated health home services for members with serious mental illness or serious emotional disturbance, 77.47(1), 78.53(2), 79.1(2) IAB 5/15/13 ARC 0748C (See ARC 0667C, IAB 4/3/13)</p>	<p>Fifth Floor ICN Room Iowa Building Cedar Rapids Service Area 411 3rd St. SE Cedar Rapids, Iowa</p>	<p>June 5, 2013 2 to 3 p.m.</p>
	<p>Lunch Room, Lower Level Pottawattamie County DHS Office Western Service Area 417 E. Kanesville Blvd. Council Bluffs, Iowa</p>	<p>June 6, 2013 9 to 10 a.m.</p>
	<p>Room 1, River Place Des Moines Service Area 2309 Euclid Ave. Des Moines, Iowa</p>	<p>June 6, 2013 10 to 11 a.m.</p>
	<p>Room 605 Scott County Administration Bldg. Eastern Iowa Service Area 600 W. 4th St. Davenport, Iowa</p>	<p>June 6, 2013 2 to 3 p.m.</p>
	<p>Room 201 Black Hawk County DHS Office 1407 Independence Ave. Waterloo, Iowa</p>	<p>June 6, 2013 2 to 3 p.m.</p>

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Securities regulation, amendments to ch 50 IAB 5/1/13 ARC 0716C	Lobby Conference Room 330 Maple St. Des Moines, Iowa	May 21, 2013 10 a.m.
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Exemptions for physicians on full-time active duty, 8.4(1), 9.13(3), 11.1, 11.4(2) IAB 5/1/13 ARC 0697C	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	May 21, 2013 11 a.m.
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Waterfowl and coot hunting seasons, 91.1, 91.3, 91.6 IAB 5/1/13 ARC 0721C	Conference Room, Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	May 23, 2013 1 p.m.
Year-round pigeon season, 100.2(1) IAB 5/1/13 ARC 0719C	Conference Room, Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	May 23, 2013 1 p.m.
Antlerless-deer-only license quotas, 106.6(6) IAB 5/1/13 ARC 0717C	Auditorium, Second Floor Wallace State Office Bldg. Des Moines, Iowa	May 23, 2013 1 p.m.
River otters and bobcats—open areas, bag limits, season dates, reporting, 108.7 IAB 5/1/13 ARC 0718C	Conference Room, Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	May 23, 2013 1 p.m.

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Supervisory appraisers, 15.1 to 15.4 IAB 5/15/13 ARC 0745C	Prof. Licensing Small Conference Rm. Second Floor 1920 SE Hulsizer Rd. Ankeny, Iowa	June 4, 2013 8:15 a.m.
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The following list will be updated as changes occur.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

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ARC 0740C**ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 23, “Emission Standards for Contaminants,” Iowa Administrative Code.

The Commission proposes to adopt by reference the federal air toxics standards for stationary engines commonly known as the RICE NESHAP. RICE NESHAP is the acronym for National Emission Standards for Hazardous Air Pollutants (NESHAP) for Reciprocating Internal Combustion Engines (RICE) (40 Code of Federal Regulations (CFR) Part 63, Subpart ZZZZ). The Commission proposes to adopt the RICE NESHAP by reference into state rules so that all compliance deadlines will be in accordance with federal time lines.

The U.S. Environmental Protection Agency (EPA) recently updated the RICE NESHAP. The revised RICE NESHAP generally provides regulatory clarity to and relief from the previous requirements.

Upon adoption of the RICE NESHAP, the Department of Natural Resources rather than EPA will implement and enforce these regulations in Iowa, thereby allowing the Department to provide compliance assistance and outreach to affected facilities as soon as possible.

In 2010, the Commission adopted an earlier version of the RICE NESHAP. In Executive Order (EO) 72, Governor Branstad subsequently rescinded adoption of the RICE NESHAP. EO 72 stated that the RICE NESHAP was too costly for small utilities that maintain and operate rarely used emergency engines and that the RICE NESHAP requirements could increase electricity rates for consumers.

In response to the concerns from Governor Branstad as expressed in EO 72 and concerns from other stakeholders, EPA agreed to reconsider the RICE NESHAP. Consequently, EPA made changes to the RICE NESHAP as published in the Federal Register on January 30, 2013 (available at www.gpo.gov/fdsys/pkg/FR-2013-01-30/pdf/2013-01288.pdf). The updated RICE NESHAP provides more circumstances for emergency engines and for engines that participate in electricity management programs to operate under non-emergency conditions. The Commission is now proposing to adopt the amendments to the RICE NESHAP.

If the Commission does not adopt the RICE NESHAP amendments, state rules will continue to be inconsistent with federal regulations and will potentially be more stringent than federal regulations. This inconsistency may cause regulatory uncertainty and confusion for affected facilities. Further, Iowa statute prohibits state air quality emission limitations or standards from being more stringent than federal air quality standards (Iowa Code section 455B.133(4)).

Item 1 amends the introductory paragraph of subrule 23.1(4) to reference paragraph 23.1(4)“cz” for adoption of the RICE NESHAP.

Item 2 amends paragraph 23.1(4)“cz” to remove the earlier adoption date for the RICE NESHAP and to adopt the January 30, 2013, version of the federal regulations.

Any person may make written suggestions or comments on the proposed amendments on or before June 4, 2013. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324; fax (515)242-5094; or by e-mail to christine.paulson@dnr.iowa.gov.

A public hearing will be held on Tuesday, June 4, 2013, at 10 a.m. in the Conference Rooms, Air Quality Bureau Office, 7900 Hickman Road, Windsor Heights, Iowa. All comments must be received no later than 4:30 p.m. on Tuesday, June 4, 2013.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Christine Paulson at (515)242-5154, or by e-mail to christine.paulson@dnr.iowa.gov to advise of any specific needs.

Jobs Impact Statement

The following is a summary of the jobs impact statement. The complete jobs impact statement is available from the Department upon request.

After analysis and review, the Department has determined that jobs could be impacted. However, the proposed amendments are only implementing federally mandated regulations. This rule making does not impose on Iowa businesses any regulations that are not required by federal law. The Commission is proposing to adopt the federal RICE NESHAP by reference so the rules will be identical to federal requirements. Additionally, facilities are impacted by the federal standards regardless of whether the Commission adopts the standards into state administrative rules.

The Commission has minimized the impact of the RICE NESHAP by waiting to propose adoption of the standards until after EPA completed its reconsideration. EPA's final rule generally provides regulatory relief from and clarity to the requirements that EPA initially mandated. In particular, the new RICE NESHAP will provide more flexibility and potential cost savings to affected industries.

According to EPA's regulatory impact analysis, the new standards for engines will have capital and annual costs, but these costs are substantially less than the costs EPA estimated for previous standards. Further, more facilities will be subject only to work practice or record-keeping requirements rather than have costs associated with controlling emissions and monitoring emissions.

Facilities that cannot meet EPA's revised requirements for emergency engines must comply with the requirements for non-emergency engines. However, until May 3, 2014, facilities that operate their engines as part of a load management program may still operate their engines for up to 50 hours in a calendar year to provide electricity to the grid or as part of a financial arrangement with another entity (also known as "peak shaving"). Essentially, these facilities have an extra year after the RICE NESHAP compliance date to determine how to use these engines.

Some facilities have already replaced their engines or installed emissions control equipment or are preparing to do so to ensure these engines can operate without any restrictions. Additionally, EPA may grant an extension of up to one year for a facility to install control equipment. Forty-three facilities in Iowa have submitted formal requests for extensions to EPA Region 7. EPA indicated to the Department that it plans to issue formal responses soon to grant nearly all the requests.

These amendments are intended to implement Iowa Code section 455B.133 and 42 U.S.C. Section 7412 (Title I of the Clean Air Act, Section 112).

The following amendments are proposed.

ITEM 1. Amend subrule 23.1(4), introductory paragraph, as follows:

23.1(4) *Emission standards for hazardous air pollutants for source categories.* The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through September 19, 2011, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses (except for paragraph 23.1(4) "cz," which specifies a later date for adoption by reference). 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, "hazardous air pollutant" has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a "major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4) “a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

ITEM 2. Amend paragraph **23.1(4)“cz”** as follows:

cz. Emission standards for stationary reciprocating internal combustion engines. These standards apply to new and existing major sources and to new and existing area sources with stationary reciprocating internal combustion engines (RICE). ~~These standards also apply to new and reconstructed RICE located at area sources.~~ For purposes of these standards, stationary RICE means any reciprocating internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile. (Part 63, Subpart ZZZZ, as amended through ~~April 20, 2006~~ January 30, 2013)

ARC 0746C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

The purpose of this amendment is to revise Medicaid eligibility rules for the Iowa Family Planning Network. Specifically, this amendment will:

1. Delete the requirement concerning health insurance coverage.
2. Delete the requirement concerning HAWK-I coverage.
3. Revise the maximum income standard to reflect the Modified Adjusted Gross Income (MAGI) deduction of 5 percent of the gross income effective January 1, 2014.

This amendment will allow Iowa residents to qualify for the Iowa Family Planning Network when:

- They have other health insurance coverage.
- They are covered by the HAWK-I program.
- Their MAGI is 305 percent of the federal poverty level for their household size.

Any interested person may make written comments on the proposed amendment on or before June 6, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

Persons may also present their views orally or in writing at five public hearings that will be held as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

June 4, 2013	9 to 10 a.m.	Department of Human Services Western Service Area Pottawattamie County DHS Office, ICN Room 417 E. Kanesville Blvd. Council Bluffs, Iowa
June 4, 2013	9 to 10 a.m.	Department of Human Services Des Moines Service Area River Place, Room 1 2309 Euclid Avenue Des Moines, Iowa
June 4, 2013	1:30 to 2:30 p.m.	Department of Human Services Scott County DHS Office Administrative Bldg. Board Room, 1st Floor 600 West 4th Street Davenport, Iowa
June 5, 2013	9:30 to 10:30 a.m.	Department of Human Services Cedar Rapids Service Area Iowa Building, 5th Floor ICN Room 411 3rd Street SE Cedar Rapids, Iowa
June 6, 2013	10 to 11 a.m.	Department of Human Services Black Hawk County DHS Office, Room 220 1407 Independence Avenue Waterloo, Iowa

At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subjects of the amendment. Written statements from attendees are also encouraged. Any person who intends to attend a public hearing and has special requirements, such as those related to mobility or hearing impairments, should contact the Department to advise of any specific needs.

This amendment does not provide for waivers in specific situations because all members should be subject to the same eligibility requirements. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4.

The following amendment is proposed.

Amend paragraph **75.1(41)“a”** as follows:

a. Eligibility. The following are eligible for assistance under this coverage group if they ~~are uninsured or have health insurance that does not include family planning services~~; are not otherwise enrolled in Medicaid (other than IowaCare), ~~and are not enrolled in the Children's Health Insurance Program (HAWK-I)~~:

(1) Women who were Medicaid members when their pregnancy ended and who are capable of bearing children but are not pregnant. Eligibility for these women extends for 12 consecutive months after the month when their 60-day postpartum period ends.

(2) Women who have reached childbearing age, are under 55 years of age, are capable of bearing children but are not pregnant, and have income that does not exceed ~~300~~ 305 percent of the federal poverty level, as determined according to paragraph 75.1(41)“c.”

(3) Men who are under 55 years of age, who are capable of fathering children, and who have income that does not exceed ~~300~~ 305 percent of the federal poverty level, as determined according to paragraph 75.1(41)“c.”

ARC 0748C**HUMAN SERVICES DEPARTMENT[441]****Amended Notice of Intended Action**

Pursuant to the authority of Iowa Code section 17A.4(1)“b,” the Department of Human Services hereby gives notice that opportunities for oral presentations will be held on the dates and at the locations listed below. The scheduling of these presentations is the result of a petition for oral presentation received by the Department from an association of 25 or more persons. The purpose of the oral presentations will be to receive oral or written comments on proposed amendments to Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code. The proposed amendments were published in the Iowa Administrative Bulletin on April 3, 2013, as **ARC 0667C**.

The amendments implement the integrated health home (IHH) for members with a serious mental illness (SMI) or a serious emotional disturbance (SED), as defined in the state plan. This is phase 2 of a planned implementation meeting federal guidelines for this program. The amendments add the information required to define eligibility, modify the payment matrix to ensure accuracy, and ensure that health home providers collaborate with case managers or social workers for individuals with chronic conditions. The amendments ensure that individuals with an SMI or SED will have all care coordinated within their integrated health home provider and that children with an SED are served by integrated health home providers trained in a system of care model.

The amendments will improve the health of the Medicaid members with an SMI or SED, with a focus on integrating mental, behavioral, and physical health; improving transitions of care; and lowering avoidable emergency room visits and hospital readmissions. In addition, the amendments will increase reimbursement to Medicaid providers that enhance their services to meet Department standards. Finally, the Department will be better able to serve these populations while achieving short-term budget savings with overall long-term budget neutrality.

Any interested person may make written comments on the proposed amendments on or before June 6, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

Oral presentation sessions will be held as follows:

June 5, 2013	2 to 3 p.m.	Department of Human Services Cedar Rapids Service Area Iowa Building, 5th Floor ICN Room 411 3rd Street SE Cedar Rapids, Iowa
June 6, 2013	9 to 10 a.m.	Department of Human Services Western Service Area Pottawattamie County DHS Office Lunch Room, Lower Level 417 E. Kanesville Blvd. Council Bluffs, Iowa
June 6, 2013	10 to 11 a.m.	Department of Human Services Des Moines Service Area River Place, Room 1 2309 Euclid Avenue Des Moines, Iowa

HUMAN SERVICES DEPARTMENT[441](cont'd)

June 6, 2013	2 to 3 p.m.	Department of Human Services Eastern Iowa Service Area Scott County Administration Bldg., Room 605 600 West 4th Street Davenport, Iowa
June 6, 2013	2 to 3 p.m.	Department of Human Services Black Hawk County DHS Office, Room 201 1407 Independence Avenue Waterloo, Iowa

At the oral presentations, persons will be asked to give their names and addresses for the record and to confine their remarks to the subjects of the amendments. Written statements from attendees are also encouraged. Any person who intends to attend an oral presentation and has special requirements, such as those related to mobility or hearing impairments, should contact the Department to advise of any specific needs.

After analysis and review of this rule making, there is no anticipated net impact on jobs, although there may be impacts to individual providers.

ARC 0747C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 514I.4 and 514I.5, the Department of Human Services proposes to amend Chapter 86, “Healthy and Well Kids in Iowa (HAWK-I) Program,” Iowa Administrative Code.

These amendments reflect programmatic changes affecting the HAWK-I program as required by the federal Patient Protection and Affordable Care Act. These amendments implement the Modified Adjusted Gross Income (MAGI) methodology. MAGI is a national standard by which all states must consider family income when determining eligibility for participation in insurance affordability programs (Medicaid, Children’s Health Insurance Program (CHIP), and plans offered through the Health Insurance Marketplace/Exchange). The amendments implement a single application and streamlined eligibility process required for all insurance affordability programs and the requirement to verify information to establish income through data matches to the greatest extent possible. These amendments also align references to the general eligibility requirements of the Medicaid program when applicable.

Any interested person may make written comments on the proposed amendments on or before June 4, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations due to requirements set forth in the federal Patient Protection and Affordable Care Act. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 514I.

The following amendments are proposed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend **441—Chapter 86**, Preamble, as follows:

PREAMBLE

These rules define and structure the department of human services healthy and well kids in Iowa (HAWK-I) program. The purpose of this program is to provide transitional health and dental care coverage to ~~uninsured~~ children who are ineligible for Title XIX (Medicaid) assistance as set forth in this chapter. The program is implemented and administered in compliance with Title XXI of the federal Social Security Act. The rules establish requirements for the third-party administrator responsible for the program administration and for the participating health and dental plans that will be delivering services to the enrollees.

ITEM 2. Amend rule **441—86.1(514I)**, definitions of “Applicant” and “Family,” as follows:

“*Applicant*” shall mean anyone in the household, including all parents, spouses, adults and children under the age of 19 who are counted in the HAWK-I family size according to the modified adjusted gross income methodology and who are listed on the application or renewal form.

“*Family*” shall mean anyone in the household, including all parents, spouses, adults and children under the age of 19 who are counted in the HAWK-I family size according to the modified adjusted gross income methodology.

ITEM 3. Rescind the definitions of “Earned income,” “Gross countable income,” “Gross income,” “Recurring lump-sum income,” “Regions,” “Self-employed” and “Unearned income” in rule **441—86.1(514I)**.

ITEM 4. Adopt the following new definitions in rule **441—86.1(514I)**:

“*Countable income*” shall mean earned and unearned income of the family according to the modified adjusted gross income methodology.

“*Health Insurance Marketplace*” or “*Exchange*” shall mean the entity authorized under 42 U.S.C. Section 18031(d)(4)(F) as amended to April 1, 2013, to evaluate and determine eligibility of applicants for Medicaid, the Children’s Health Insurance Program (CHIP), and other health programs.

“*Modified adjusted gross income*” shall mean the methodology prescribed in 42 U.S.C. Section 1396a(e)(14) and 42 CFR 435.603 as amended to April 1, 2013.

ITEM 5. Amend rule **441—86.2(514I)**, introductory paragraph, as follows:

441—86.2(514I) Eligibility factors. The decision with respect to eligibility shall be based primarily on electronic data matches and information furnished by the applicant, the enrollee, or a person acting on behalf of the applicant or enrollee. A child must meet the following eligibility factors to participate in the HAWK-I program.

ITEM 6. Amend paragraph **86.2(2)“a”** as follows:

a. ~~Gross-countable~~ Countable income. In determining initial and ongoing eligibility for the HAWK-I program, ~~gross~~ countable income shall not exceed 300 percent of the federal poverty level for a family of the same size. Countable income shall be determined using the modified adjusted gross income methodology.

ITEM 7. Rescind paragraph **86.2(2)“b.”**

ITEM 8. Reletter paragraphs **86.2(2)“c”** and **“d”** as **86.2(2)“b”** and **“c.”**

ITEM 9. Amend relettered paragraph **86.2(2)“b”** as follows:

b. *Verification of income.* Income shall be verified through electronic data matches when possible or otherwise verified using the best information available. ~~For example, earnings from the 30 days before the date of application may be used to verify earned income if it is representative of the income expected in future months.~~

(1) No change.

~~(2) Unearned income shall be verified through data matches when possible, award letters, warrant copies, or other acceptable means of verification.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~(3) (2) Self If self-employment income shall be verified using cannot be verified through electronic means, business records or income tax returns from the previous year can be used if they are representative of anticipated earnings. If business records or tax returns from the previous year are not representative of anticipated earnings, an average of the business records or tax returns from the previous two or three years may be used if that average is representative of anticipated earnings.~~

~~(4) When a child who has been determined ineligible for Medicaid is referred to the HAWK-I program, the third-party administrator shall use the income amount used by the Medicaid program unless rules in this chapter require the income to be treated differently.~~

ITEM 10. Rescind subrule 86.2(3) and adopt the following new subrule in lieu thereof:

86.2(3) *Family size.* For purposes of establishing initial and ongoing eligibility under the HAWK-I program, the family size shall be determined according to the modified adjusted gross income methodology.

ITEM 11. Amend subrules 86.2(4) to 86.2(7), 86.2(11) and 86.2(12) as follows:

86.2(4) *Uninsured status.* The child must be uninsured.

a. A child who is currently enrolled in an individual or group health plan is not eligible to participate in the HAWK-I program. However, a child who is enrolled in a plan shall not be considered insured for purposes of the HAWK-I program if:

(1) The plan provides coverage only for a specific disease or service (such as a vision, dental, or cancer policy), or

(2) The child does not have reasonable geographic access to care under that plan. “Reasonable geographic access” means that the plan or an option available under the plan does not have service area limitations or, if the plan has service area limitations, the child lives within 30 miles or 30 minutes of a network primary care provider; or

(3) The child lost Medicaid eligibility solely because of the loss of income disregards from the implementation of the modified adjusted gross income methodology. If a child loses eligibility because of such loss of income disregards, the child may be covered under the HAWK-I program for up to 12 months following the loss of Medicaid eligibility regardless of the presence of other health insurance.

b. and c. No change.

86.2(5) *Ineligibility for Medicaid.* The child shall not be receiving Medicaid or eligible to receive Medicaid ~~if application were made~~ except when the child would be required to meet a spenddown under the medically needy program in accordance with the provisions of 441—subrule 75.1(35).

~~*a.* A child who would be eligible for Medicaid except for the parent’s failure or refusal to cooperate in establishing initial or ongoing eligibility shall not be eligible for coverage under the HAWK-I program.~~

~~*b.* Children who are excluded from the Medicaid household due to the income or resources of the child may participate in the HAWK-I program if otherwise eligible.~~

86.2(6) *Iowa residency.* The child shall be a resident of the state of Iowa. A resident of Iowa is a person: Residency in Iowa is a condition of eligibility for the HAWK-I program. Residency shall be established in accordance with rule 441—75.10(249A).

~~*a.* Who is living in Iowa voluntarily with the intention of making that person’s home in Iowa and not for a temporary purpose; or~~

~~*b.* Who, at the time of application, is not receiving assistance from another state and entered Iowa with a job commitment or to seek employment or who is living with parents or guardians who entered Iowa with a job commitment or to seek employment.~~

86.2(7) *Citizenship and alien immigration status.* The To be eligible for the HAWK-I program, the child shall be a citizen or lawfully admitted alien immigrant. The criteria established under 441—subrule 75.11(2) shall be followed when determining whether a lawfully admitted alien immigrant child is eligible to participate in the HAWK-I program.

a. The citizenship or ~~alien immigration~~ status of the parents or other responsible person shall not be considered when determining the eligibility of the child to participate in the program.

b. As a condition of eligibility for HAWK-I:

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) All applicants shall attest to their citizenship status by signing the application form, which contains a citizenship declaration. ~~EXCEPTION: Applicants applying pursuant to subrule 86.3(6) shall instead complete and sign Form 470-2549, Statement of Citizenship Status.~~

(2) When a child under the age of 19 is not living independently, the child's parent or other responsible person with whom the child lives shall be responsible for attesting to the child's citizenship or alien immigration status and for providing any required proof of the status.

c. Except as provided in 441—paragraph 75.11(2) "*f*," applicants or enrollees for whom an attestation of United States citizenship has been made pursuant to paragraph 86.2(7) "*b*" shall present satisfactory documentation of citizenship or nationality as defined in 441—paragraphs 75.11(2) "*d*," "*e*," "*g*," and "*h*," and "*i*."

d. An applicant or enrollee shall have a reasonable opportunity period to obtain and provide proof of citizenship and nationality: ~~in accordance with 441—paragraph 75.11(2) "*c*."~~ For the purposes of this requirement, the "reasonable period" begins on the date a written request to obtain and provide proof is issued to an applicant or enrollee and continues to the date the proof is provided or to the ninetieth calendar day from the date the written request was issued.

e. ~~Eligibility for HAWK-I shall be approved for applicants for one reasonable period as described in paragraph 86.2(7) "*d*."~~

~~(1) The reasonable period shall begin no earlier than the first day of the month following the month in which a valid application is received and shall continue until the end of the month in which the ninetieth day occurs or until acceptable documentary evidence is provided, whichever is earlier. However, coverage may be canceled before the end of the reasonable period when another eligibility requirement is not met.~~

~~(2) For the purposes of HAWK-I eligibility, an applicant who received coverage during a reasonable period as a Medicaid applicant shall not be granted coverage pursuant to this paragraph for a second reasonable period.~~

f. ~~Failure to provide acceptable documentary evidence by the ninetieth calendar day from the date the written request was issued pursuant to paragraph 86.2(7) "*d*" shall be the basis for cancellation of coverage under HAWK-I for the child.~~

g. e. Failure to provide acceptable documentary evidence for a child shall not affect the eligibility of other children in the family for whom acceptable documentary evidence has been provided.

86.2(11) *Preexisting conditions.* ~~The child shall not be denied eligibility based on the presence of a preexisting medical or dental condition.~~

86.2(12) *Furnishing a social security number.*

a. As a condition of eligibility and in accordance with rule 441—75.7(249A), a social security number or proof of application for the number if the number has not been issued or is not known must be furnished for a child for whom coverage under HAWK-I is being requested or received.

(1) ~~When proof of application for a social security number has been provided, the number must be reported upon receipt.~~

(2) ~~The requirement to provide a social security number does not apply if the person refuses to obtain a social security number because of well-established religious objections. The term "well-established religious objections" means that the person is a member of a recognized religious sect or a division of a recognized religious sect and adheres to the tenets or teachings of the sect or division, and for that reason is conscientiously opposed to applying for or using a national identification number.~~

b. Assistance shall not be denied, delayed, or discontinued pending the issuance or verification of a social security number when the applicant or enrollee is cooperating in providing information necessary for issuance of the number.

c. ~~The mother of a newborn child shall have until the second month following the mother's discharge from the hospital to apply for a social security number for the child.~~

d. ~~A social security number may be requested for a person in the family for whom coverage under HAWK-I is not being requested or received, but provision of the number shall not be a condition of eligibility for the applicant or enrollee.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 12. Amend rule 441—86.3(514I) as follows:

441—86.3(514I) Application process.

86.3(1) Who may apply. Each person wishing to do so shall have the opportunity to apply without delay for the HAWK-I program in accordance with rule 441—76.1(249A). ~~When the request is made in person, the requester shall immediately be given an application form. When a request is made that the application form be mailed, it shall be sent in the next outgoing mail.~~

a. Child lives with parents. ~~When the child lives with the child's parents, including stepparents and adoptive parents, the parent shall file the application on behalf of the child unless the parent is unable to do so.~~

~~If the parent is unable to act on the child's behalf because the parent is incompetent or physically disabled, another person may file the application on behalf of the child. The responsible person shall be a family member, friend or other person who has knowledge of the family's financial affairs and circumstances and a personal interest in the child's welfare or a legal representative such as a conservator, guardian, executor or someone with power of attorney. The responsible person shall sign the application form and assume the responsibilities of the incompetent or disabled parent in regard to the application process and ongoing eligibility determinations.~~

b. Child lives with someone other than a parent. ~~When the child lives with someone other than a parent (e.g., another relative, friend, guardian), the person who has assumed responsibility for the care of the child may apply on the child's behalf. This person shall sign the application form and assume responsibility for providing all information necessary to establish initial and ongoing eligibility for the child.~~

c. Child lives independently or is married. ~~When a child under the age of 19 lives in an independent living situation or is married, the child may apply on the child's own behalf, in which case, the child shall be responsible for providing all information necessary to establish initial and ongoing eligibility. If the child is married, both the child and the spouse shall sign the application form.~~

86.3(2) Application form Applications. ~~An application for the HAWK-I program shall be submitted on Comm. 156, HAWK-I Application, or on Form 470-4016, HAWK-I Electronic Application Summary and Signature, unless the family applies for the Medicaid program first filed in accordance with rule 441—76.1(249A).~~

a. ~~When an application has been filed for the Medicaid program in accordance with the provisions of rule 441—76.1(249A) and Medicaid eligibility does not exist in accordance with the provisions of rule 441—75.1(249A), or the family must meet a spenddown in accordance with the provisions of 441—subrule 75.1(35) before the child can attain eligibility, the Medicaid application shall be used to establish eligibility for the HAWK-I program in lieu of the HAWK-I Application, Comm. 156, or Form 470-4016, HAWK-I Electronic Application Summary and Signature.~~

b. ~~Applications may be obtained by telephoning the toll-free telephone number of the third-party administrator or by accessing the Web site at www.hawk-i.org.~~

86.3(3) Place of filing. ~~An application for the HAWK-I program shall may be filed with the third-party administrator responsible for making the eligibility determination. Any through an Internet Web site, by telephone, through other electronic means, or in any local or area office of the department of human services, an exchange, disproportionate share hospital, federally qualified health center, or other facilities facility in which outstationing activities are provided, school nurse, Head Start, maternal and child health center, WIC office, or other entity may accept the application. However, all applications shall be forwarded to the third-party administrator.~~

86.3(4) Application filing date Date and method of filing.

a. Date of filing. ~~The application is considered filed on the date an identifiable application is received by the third-party administrator or the department. An identifiable application is an application containing a legible name, address, and signature when received in accordance with rule 441—76.1(249A).~~

b. Applications received after business hours. ~~When an application is received after business hours, it will be considered received on the next business day.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~c. Medicaid applications referred to the HAWK-I program. When the family has applied for Medicaid first and the department makes a referral to the third-party administrator, the date the Medicaid application was originally filed with the department shall be the filing date.~~

86.3(5) No change.

86.3(6) *Application not required.*

a. An application shall not be required when a child becomes ineligible for Medicaid ~~and the local office of the department makes a referral to the HAWK-I program.~~

~~(1) A referral to the HAWK-I program pursuant to subrule 86.4(3) or 86.4(4) shall be accepted in lieu of an application.~~

~~(2) The original Medicaid application or the last review form that is on file in the local office of the department, whichever is more current, shall suffice to meet the signature requirements.~~

b. A new application shall not be required when an eligible child is added to an existing HAWK-I eligible group.

c. A new application shall not be required when a child moves between supplemental dental-only coverage as specified in rule 441—86.20(514I) and full medical and dental coverage.

86.3(7) *Information and verification procedure.* The decision with respect to eligibility shall be based primarily on information furnished by the applicant, enrollee, or person acting on behalf of the applicant or enrollee and verified through electronic data matches whenever possible.

a. ~~The third-party administrator shall notify the applicant, enrollee, or person acting on behalf of the applicant or enrollee shall be notified~~ in writing of additional information or verification that is required to establish eligibility. ~~The third-party administrator shall provide this notice may be provided~~ personally, by U.S. mail, by e-mail, or by facsimile.

b. Failure to supply the information or verification or refusal to authorize the third-party administrator to secure the information shall serve as a basis for rejection of the application or cancellation of coverage. If the requested information or authorization is received within 14 calendar days of the notice of decision on an application or within 14 calendar days of the effective date of cancellation for enrollees, the information or authorization shall be acted upon as though it had been provided timely. If the fourteenth calendar day falls on a weekend or state holiday, the applicant or enrollee shall have until the next business day to provide the information.

c. The applicant, enrollee, or person acting on behalf of the applicant or enrollee shall have 10 working days to supply the information or verification requested ~~by the third-party administrator.~~ The ~~third-party administrator~~ due date may extend the deadline be extended for a reasonable period when the applicant, enrollee, or person acting on behalf of the applicant or enrollee is making every effort but is unable to secure the required information or verification from a third party.

86.3(8) *Time limit for decision.* ~~The third-party administrator shall make a decision~~ Decisions regarding the applicant's eligibility to participate in the HAWK-I program shall be made within ten working days from the date of receiving the completed application and all necessary information and verification unless the application cannot be processed ~~within the period for a reason that is~~ reasons beyond the control of the department or third-party administrator.

~~a. EXCEPTION: When the application is referred for a Medicaid eligibility determination and Medicaid eligibility is denied, the third-party administrator shall determine HAWK-I eligibility no later than ten working days from the date the administrator receives the notice of Medicaid denial unless additional verification is needed.~~

~~b. "Day one" of the ten-day period shall mean~~ starts the first working day following the date of receipt of a completed application and all necessary information and verification.

86.3(9) No change.

86.3(10) *Waiting lists.* When the department has established that all of the funds appropriated for this program are obligated, ~~the third-party administrator shall deny~~ all subsequent applications for HAWK-I coverage shall be denied unless Medicaid eligibility exists.

a. ~~The department or the third-party administrator shall mail a notice of decision. The notice shall state to the applicant that states:~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) The applicant meets the eligibility requirements but that no funds are available and that the applicant will be placed on a waiting list, or

(2) The ~~person~~ applicant does not meet eligibility requirements. ~~In, in~~ which case, the applicant shall not be put on a waiting list.

b. Prior to an applicant's being denied or placed on the waiting list, ~~the third-party administrator shall refer the application to the Medicaid program for an eligibility determination. If Medicaid eligibility exists, the department shall approve the child for Medicaid coverage in accordance with 441—86.4(514I) it must be established that the child is not eligible for Medicaid.~~

c. ~~The third-party administrator shall enter applicants~~ Applicants shall be placed on the waiting list on the basis of the date an identifiable application form specified in ~~subrule 86.3(2) rule 441—76.1(249A)~~ is date-stamped by the third-party administrator. An identifiable application is an application containing a legible name, address, and signature received.

(1) In the event that more than one application is received on the same day, ~~the third-party administrator shall enter~~ applicants shall be placed on the waiting list on the basis of the day of the month of the oldest child's birthday, the lowest number being first on the list.

(2) ~~The third-party administrator shall decide any~~ Any subsequent ties shall be determined by the month of birth of the oldest child, January being month one and the lowest number.

d. If funds become available, ~~the third-party administrator shall select~~ applicants shall be selected from the waiting list based on the order in which their names appear on the list and shall ~~notify them~~ be notified of their selection.

e. After being notified of the availability of funding, the applicant shall have 15 working days to confirm the applicant's continued interest in applying for the program and to provide any information necessary to establish eligibility. If the applicant does not confirm continued interest in applying for the program and does not provide any additional information necessary to establish eligibility within 15 working days, ~~the third-party administrator shall delete the applicant's name~~ shall be deleted from the waiting list and ~~shall contact the next applicant on the waiting list~~ shall be contacted.

86.3(11) Falsification of information. Rescinded IAB 11/19/08, effective 1/1/09.

86.3(12) Applications pended due to unavailability of a plan. When there is no participating health plan in the applicant's county of residence, the application shall be held until a plan is available. The application shall be processed when a plan becomes available and coverage shall be effective the first day of the month the plan becomes available.

ITEM 13. Amend rule 441—86.4(514I) as follows:

441—86.4(514I) Coordination with Medicaid.

86.4(1) HAWK-I applicant appears eligible for Medicaid. At the time of initial application, if it appears is determined the child may be is eligible for Medicaid in accordance with the provisions of rule 441—75.1(249A), with the exception of meeting a spenddown under the medically needy program at 441—subrule 75.1(35), a referral shall be made by the third-party administrator to the department for a determination of Medicaid eligibility as follows: the child shall be enrolled in the Medicaid program.

a. ~~The original Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526, or Form 470-4016, HAWK-I Electronic Application Summary and Signature Page, and copies of any accompanying information and verification shall be forwarded to the department within 24 hours, or the next working day, whichever is sooner. The third-party administrator shall maintain a copy of all documentation sent to the department and a log to track the disposition of all referrals.~~

b. ~~The third-party administrator shall notify the family that the referral has been made. The third-party administrator shall return to the family any original verification and information that was submitted with the application and retain a copy in the file record.~~

c. ~~The referral shall be considered an application for Medicaid in accordance with the provisions of rule 441—76.1(249A). The time limit for processing the referred application begins with the date the Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526, or Form 470-4016, HAWK-I Electronic Application Summary and Signature Page, is date-stamped as being received by the third-party administrator.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

86.4(2) *HAWK-I enrollee ~~appears~~ eligible for Medicaid.* At the time of the annual review, if it ~~appears~~ the child ~~may be~~ is determined eligible for Medicaid in accordance with the provisions of rule 441—75.1(249A), with the exception of meeting a spenddown under the medically needy program at 441—subrule 75.1(35), the ~~third-party administrator shall make a referral to the department for a determination of Medicaid eligibility as stated in subrule 86.4(1) above. However, the child shall remain eligible for the HAWK-I program pending the Medicaid eligibility determination unless be enrolled in Medicaid effective the first day following the expiration of the 12-month certification HAWK-I enrollment period expires first.~~

86.4(3) *Medicaid applicant not eligible.* If a child is not eligible for Medicaid under the provisions of rule 441—75.1(249A), with the exception of meeting a spenddown under the medically needy program at 441—subrule 75.1(35), or is voluntarily excluded from the Medicaid eligible group under the provisions of 441—75.59(249A) and meets the criteria specified at 86.2(5), the department shall make a referral to the third-party administrator for an eligibility determination under the HAWK-I program as follows:

a.—The department worker shall submit an electronic referral to the HAWK-I program or complete Form 470-3563, Referral to HAWK-I, and send the form and a copy of the Medicaid notice of decision to the third-party administrator.

b.—The third-party administrator shall date-stamp Form 470-3563 with the date the completed form is received.

c.—The third-party administrator shall notify the family of the referral and proceed with an eligibility determination under the HAWK-I program.

d.—The period for processing the referral begins with the day on which:

(1) Form 470-3563, Referral to HAWK-I, is date-stamped as received by the third-party administrator; or

(2) The third-party administrator receives the electronic referral file.

86.4(4) *86.4(3) Medicaid member becomes ineligible.* If a child becomes ineligible for Medicaid under the provisions of rule 441—75.1(249A), with the exception of meeting a spenddown under the medically needy program at 441—subrule 75.1(35), or is voluntarily excluded from the Medicaid eligible group under the provisions of rule 441—75.59(249A) and meets the criteria specified at subrule 86.2(5), the department shall make a referral to the third-party administrator for an eligibility determination under the HAWK-I program as follows: the child shall be enrolled in the HAWK-I program if otherwise eligible.

a.—The department worker shall submit an electronic referral to the HAWK-I program or complete Form 470-3563, Referral to HAWK-I, and send the form and a copy of the Medicaid notice of decision to the third-party administrator.

b.—The third-party administrator shall:

(1) Date-stamp Form 470-3563 with the date the completed form is received;

(2) Notify the family of the referral; and

(3) Proceed with an eligibility determination under the HAWK-I program.

c.—The period for processing the referral begins with the day on which:

(1) Form 470-3563, Referral to HAWK-I, is date-stamped as received by the third-party administrator; or

(2) The third-party administrator receives the electronic referral file.

ITEM 14. Amend rule 441—86.5(514I) as follows:

441—86.5(514I) Effective date of coverage.

86.5(1) *Initial application.* Coverage for a child who is determined eligible for the HAWK-I program on the basis of an initial application for either HAWK-I or Medicaid shall be effective the first day of the month following the month in which the application is filed, regardless of the day of the month the application is filed, ~~or when a plan becomes available in the applicant's county of residence.~~ However, when the child does not meet the provisions of paragraph 86.2(4) "a," coverage shall be effective the first day of the month following the month in which health insurance coverage is lost. Also, a one-month waiting period shall be imposed for a child who is subject to a monthly premium pursuant to paragraph

HUMAN SERVICES DEPARTMENT[441](cont'd)

86.8(2) “c” when the child’s health insurance coverage ended in the month of application. EXCEPTIONS: A waiting period shall not be imposed if any of the following conditions apply:

a. to e. No change.

86.5(2) Referrals from Medicaid.

a. *Cancellation of Medicaid.* Coverage for children who are determined eligible for the HAWK-I program ~~on the basis of a referral from Medicaid~~ due to cancellation of Medicaid benefits shall be effective the first day of the month after Medicaid eligibility is lost, ~~regardless of the date of the referral~~, in order to ensure that there is no break in coverage. However, when such a child does not meet the provisions of paragraph 86.2(4) “a,” coverage shall be effective the first day of the month following the month in which health insurance coverage is lost.

b. *Denial of Medicaid.* ~~Coverage for children who are determined eligible for the HAWK-I program on the basis of a referral from Medicaid due to denial of Medicaid benefits shall be effective no earlier than the first day of the month following the month in which the Medicaid application was received in accordance with 441—subrule 76.1(2). However, when such a child does not meet the provisions of paragraph 86.2(4) “a,” coverage shall be effective the first day of the month following the month in which health insurance coverage is lost.~~ EXCEPTION: If the child lost Medicaid eligibility solely because of the loss of income disregards from the implementation of the modified adjusted gross income methodology, the child may be covered under the HAWK-I program for up to 12 months following the loss of Medicaid eligibility, regardless of the presence of other health insurance coverage.

86.5(3) and 86.5(4) No change.

ITEM 15. Rescind subrule **86.6(1)**.

ITEM 16. Renumber subrules **86.6(2) to 86.6(5)** as **86.6(1) to 86.6(4)**.

ITEM 17. Amend subrules 86.7(4) to 86.7(6) as follows:

86.7(4) Iowa residence abandoned. The child shall be canceled from the program as of the first day of the month following the month in which the child relocated to another state. Eligibility shall not be canceled when the child is temporarily absent from the state in accordance with the provisions of ~~subrule 86.2(6) 441—subrule 75.10(2)~~.

86.7(5) Eligible for Medicaid. The child shall be canceled from the program as of the first day of the month following the month in which ~~the third-party administrator is notified of~~ Medicaid eligibility is obtained. If there are months during which the child is covered by both the Medicaid and HAWK-I programs, the HAWK-I program shall be the primary payor and Medicaid shall be the payor of last resort.

86.7(6) Enrolled in other health insurance coverage. The child shall be canceled from the program as of the first day of the month following the month in which the department or the third-party administrator is notified that the child has other health insurance coverage. If there are months during which the child is covered by both another insurance plan and the HAWK-I program, the other insurance plan shall be the primary payor and HAWK-I shall be the payor of last resort.

ITEM 18. Amend subrule 86.8(1) as follows:

86.8(1) Income considered. The ~~countable~~ income considered in determining the premium amount shall be the family’s ~~gross~~ countable income minus 20 percent of the family’s earned income.

ITEM 19. Amend subrule 86.8(8) as follows:

86.8(8) Unpaid premiums Program lock-out. ~~Before the child can regain coverage under the program, unpaid premiums owed for coverage received in accordance with subrule 86.8(4) within the past 24 months must be paid in full. A child who has been disenrolled from the program due to nonpayment of premiums shall be locked out of the program until the arrearage is paid in full or for a period not to exceed 90 days, whichever occurs first.~~

a. Failure to pay the unpaid premiums shall result in denial of the application if less than 90 days has elapsed since the effective date of disenrollment. EXCEPTION: The unpaid premium obligation shall be reduced to zero if upon reapplication a premium would not be assessed because the household’s income is less than 150 percent of the federal poverty level.

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b. If ~~no reapplication is filed~~ the arrearage is not paid within 24 months of failing to pay a premium, the debt shall be expunged and shall no longer be owed.

ITEM 20. Amend subrule 86.9(1) as follows:

86.9(1) Review form. ~~The third-party administrator shall send the family Form 470-3526, Healthy and Well Kids in Iowa (HAWK-I) Application.~~ A prepopulated review form on which the answers, except for income, have been completed based on the information on file shall be sent to the family. The family shall review the completed information for accuracy and fill in the income section of the form. ~~The~~ If family income cannot be verified through electronic data matches, the family shall be required to provide verification of current income ~~and~~. The family shall sign and date the form attesting to its accuracy as part of the review process.

ITEM 21. Amend rule 441—86.10(514I), introductory paragraph, as follows:

441—86.10(514I) Reporting changes. Changes that may affect eligibility shall be reported timely to the department or the third-party administrator. “Timely” shall mean no later than ten working days after the change occurred. ~~“Day one” of the ten-day period shall mean~~ The ten working-day period begins the first working day following the date of the change. The parent, guardian, or other adult responsible for the child shall report the change. ~~If unless~~ the child is emancipated, married, or otherwise in an independent living situation, in which case the child shall be responsible for reporting the change.

ITEM 22. Rescind subrule **86.10(1)**.

ITEM 23. Renumber subrules **86.10(2)** to **86.10(6)** as **86.10(1)** to **86.10(5)**.

ITEM 24. Renumber subrules **86.10(8)** to **86.10(10)** as **86.10(6)** to **86.10(8)**.

ITEM 25. Amend rule 441—86.11(514I) as follows:

441—86.11(514I) Notice requirements. The applicant shall be provided an adequate written notice of the decision ~~of the third-party administrator~~ regarding the applicant’s eligibility for the HAWK-I program. The enrollee shall be notified in writing of any decision that adversely affects the enrollee’s eligibility or the amount of benefits. The notice shall be timely and adequate as provided in 441—subrule 7.7(1).

ITEM 26. Amend rule 441—86.12(514I) as follows:

441—86.12(514I) Appeals and fair hearings. If the applicant or enrollee disputes a decision ~~by the third-party administrator~~ to reduce, cancel or deny participation in the HAWK-I program, the applicant or enrollee may appeal the decision in accordance with 441—Chapter 7.

ITEM 27. Amend rule 441—86.13(514I) as follows:

441—86.13(514I) Third-party administrator. The third-party administrator shall have the following responsibilities:

86.13(1) Determination of eligibility. ~~The third-party administrator shall determine eligibility~~ Eligibility for the HAWK-I program shall be determined utilizing the department’s eligibility system and in accordance with the provisions of rule 441—86.2(514I).

86.13(2) to 86.13(4) No change.

86.13(5) Application process. ~~The third-party administrator shall process applications~~ Applications shall be processed in accordance with the provisions of rule 441—86.3(514I).

a. Processing applications and mailing of approvals and denials shall be completed within ten working days of receipt of the application and all necessary information and verification unless the application cannot be processed within this period for a reason beyond the control of the third-party administrator.

b. Original verification information shall be returned to the applicant or enrollee upon completion of review.

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~~86.13(6)~~ *Tracking of applications.*—The third-party administrator shall track and maintain applications. This includes, but is not limited to, the following procedures:

- ~~a.~~ Date-stamping all applications with the date of receipt.
- ~~b. c.~~ Screening applications Applications shall be screened for completeness, and requesting in writing any additional Additional information or verification necessary to establish eligibility may be requested in writing. All information or verification of information attained shall be logged.
- ~~e.~~ Entering all applications received into the data system with an identifier status of pending, approved, or denied.
- ~~d.~~ Referring applications to the county office of the department, when appropriate, and receiving application referrals from the department.
- ~~e.~~ Rescinded IAB 7/9/03, effective 7/1/03.
- ~~f. d.~~ Notifying the health Health and dental plans shall be notified when the number of enrollees who speak the same non-English language equals or exceeds 10 percent of the number of enrollees in the health or dental plan.

~~86.13(7)~~ ~~86.13(6)~~ *Effective date of coverage.* The third-party administrator shall establish effective date of coverage shall be established in accordance with the provisions of rule 441—86.5(514I).

~~86.13(8)~~ ~~86.13(7)~~ *Selection of health or dental plan.* The third-party administrator shall provide participating health and dental plan information to families of eligible children by telephone or mail and, if necessary, offer unbiased assistance in the selection of a health or dental plan in accordance with the provisions of rule 441—86.6(514I).

~~86.13(9)~~ ~~86.13(8)~~ *Enrollment.* The third-party administrator shall notify participating health and dental plans of enrollments.

~~86.13(10)~~ ~~86.13(9)~~ *Disenrollments.* The third-party administrator shall disenroll an enrollee when the enrollee's eligibility for the HAWK-I program is canceled in accordance with the provisions of rule 441—86.7(514I). The third-party administrator shall notify the participating health and dental plans when an enrollee is disenrolled.

~~86.13(11)~~ ~~86.13(10)~~ *Annual reviews of eligibility.* The third-party administrator shall annually review eligibility Eligibility shall be reviewed annually in accordance with the provisions of rules 441—86.2(514I) and 441—86.9(514I).

~~86.13(12)~~ ~~86.13(11)~~ *Acting on reported changes.* The third-party administrator shall ensure that all changes reported by the HAWK-I enrollee in accordance with rule 441—86.10(514I) are acted upon no later than ten working days from the date the change is reported.

- ~~86.13(13)~~ ~~86.13(12)~~ *Premiums.* The third-party administrator shall:
- ~~a.~~ Calculate premiums in accordance with the provisions of rule 441—86.8(514I).
 - ~~b.~~ Collect HAWK-I premium payments. The funds shall be deposited into an interest-bearing account maintained by the department for periodic transmission of the funds and any accrued interest to the HAWK-I trust fund in accordance with state accounting procedures.
 - ~~c.~~ Track the status of the enrollee premium payments and provide the data to the department.
 - ~~d.~~ Mail a reminder notice to the family if the premium is not received by the due date.

~~86.13(14)~~ ~~86.13(13)~~ *Notices to families.* The third-party administrator shall develop and provide timely Timely and adequate approval, denial, and cancellation notices to families that clearly explain the action being taken in regard to an application or an existing enrollment shall be issued to the family. Denial and cancellation notices shall clearly explain the appeal rights of the applicant or enrollee. All notices shall be available in English and Spanish.

~~86.13(15)~~ ~~86.13(14)~~ *Records.* The third-party administrator shall at a minimum maintain the following records:

- ~~a.~~ All records required by the department and the department of inspections and appeals.
- ~~b.~~ Records which identify transactions with or on behalf of each enrollee by social security number or other unique identifier.
- ~~c.~~ Application, case and financial records.

HUMAN SERVICES DEPARTMENT[441](cont'd)

d. All other records as required by the department in determining compliance with any federal or state law or rule or regulation promulgated by the United States Department of Health and Human Services or by the department.

~~86.13(16)~~ **86.13(15)** *Confidentiality.* The third-party administrator shall protect and maintain the confidentiality of HAWK-I applicants and enrollees in accordance with 441—Chapter 9.

~~86.13(17)~~ **86.13(16)** *Reports to the department.* The third-party administrator shall submit reports as required by the department.

~~86.13(18)~~ **86.13(17)** *Systems.* The third-party administrator shall maintain data files that are compatible with the department's and the health plans' data files and shall make the system accessible to department staff.

ITEM 28. Amend subrule 86.15(2) as follows:

86.15(2) *Services.* The participating health or dental plan shall provide coverage for the services specified in rule 441—86.14(514I) to all children determined eligible ~~by the third-party administrator.~~

a. The participating health or dental plan shall make services it provides to HAWK-I enrollees at least as accessible to the enrollees (in terms of timeliness, duration and scope) as those services are accessible to other commercial enrollees in the area served by the health or dental plan.

b. Participating health plans shall ensure that emergency services (inpatient and outpatient) are available for treatment of an emergency medical condition 24 hours a day, seven days a week, either through the health plan's own providers or through arrangements with other providers.

c. If a participating health or dental plan does not provide statewide coverage, the health or dental plan shall participate in every county ~~within the region in which the health or dental plan has contracted to provide services~~ in which it is licensed and in which a provider network has been established. ~~Regions are specified in rule 441—86.1(514I).~~

ITEM 29. Amend paragraph **86.15(7)“c”** as follows:

c. Establishes time frames which ensure that appeals be resolved within ~~60~~ 45 days, except for appeals which involve emergency medical conditions, which shall be resolved within time frames appropriate to the situations.

ITEM 30. Amend subrule **86.19(1)**, definition of “Administrative error,” as follows:

“*Administrative error*” means an action of the department or the HAWK-I third-party administrator that results in incorrect payment of benefits, including premiums paid to a health or dental plan, due to one or more of the following circumstances:

1. Misfiled or lost form or document.
2. Error in typing or copying.
3. Computer input error.
4. Mathematical error.
5. Failure to determine eligibility correctly when all essential information was available to the department or the HAWK-I third-party administrator.
6. Failure to request essential verification necessary to make an accurate eligibility determination.
7. Failure to make timely revision in eligibility following a change in policy requiring application of the policy change as of a specific date.
8. Failure to issue timely notice to cancel benefits that results in benefits continuing in error.
- ~~9. Failure of the department to provide correct information to the HAWK-I third-party administrator regarding a child's Medicaid eligibility.~~

ITEM 31. Amend subrule 86.20(3) as follows:

86.20(3) *Premiums.* Premiums for participation in the supplemental dental-only plan are assessed as follows:

- a.* No premium is charged to families who meet the provisions of paragraph 86.8(2) “*a.*”
- b.* If the family's ~~gross~~ countable income is equal to or exceeds 150 percent of the federal poverty level but does not exceed 200 percent of the federal poverty level for a family of the same size, the premium is \$5 per child per month with a \$10 monthly maximum per family.

HUMAN SERVICES DEPARTMENT[441](cont'd)

c. If the family's gross countable income exceeds 200 percent of the federal poverty level but does not exceed 250 percent of the federal poverty level for a family of the same size, the premium is \$10 per child per month with a \$15 monthly maximum per family.

d. If the family's gross countable income exceeds 250 percent of the federal poverty level but does not exceed 300 percent of the federal poverty level for a family of the same size, the premium is \$15 per child per month with a \$20 monthly maximum per family.

e. and f. No change.

ARC 0745C**REAL ESTATE APPRAISER EXAMINING BOARD[193F]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 543D.5, the Real Estate Appraiser Examining Board hereby gives Notice of Intended Action to amend Chapter 15, “Supervisor Responsibilities,” Iowa Administrative Code.

The proposed amendments to Chapter 15 would change the years of experience required to be a supervisor, remove unnecessary language, clarify what is considered good standing, and add language to clarify requirements from the Appraiser Qualifications Board.

Consideration will be given to all written suggestions or comments on the proposed amendments received no later than 4:30 p.m. on June 4, 2013. Comments should be addressed to Toni Bright, Iowa Real Estate Appraiser Examining Board, 1920 SE Hulsizer Road, Ankeny, Iowa 50021. E-mail may be sent to toni.bright@iowa.gov.

A public hearing will be held on June 4, 2013, at 8:15 a.m. in the Second Floor Professional Licensing Small Conference Room, 1920 SE Hulsizer Road, Ankeny, Iowa, at which time persons may present their views on the proposed amendments either orally or in writing. At the hearing, any person who wishes to speak will be asked to give the person's name and address for the record and to confine remarks to the subject of the proposed amendments.

These amendments do not have any fiscal impact to the state of Iowa.

These amendments are subject to waiver or variance pursuant to 193F—Chapter 11.

After analysis and review of this rule making, no direct impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 17A, 272C and 543D.

The following amendments are proposed.

ITEM 1. Amend rule 193F—15.1(543D) as follows:

193F—15.1(543D) Description. The importance of the role of the supervisory appraiser places ethical and professional standards on those who serve in this capacity. The function of the supervisory appraiser is to help adequately prepare a trainee to demonstrate professional competence and work independently upon issuance of full licensure. The supervisor is considered an integral part of the training process, and supervision should be considered a full-time, hands-on responsibility. ~~To this end, the board has promulgated the following best practices to clarify the board's intent for supervisory appraisers.~~

ITEM 2. Amend rule **193F—15.2(543D)**, numbered paragraph “9,” as follows:

9. Inspect each appraised property with the trainee until the supervisor determines the trainee is competent, in accordance with the COMPETENCY RULE of USPAP for the property type and geographic location.

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

ITEM 3. Amend rule 193F—15.3(543D) as follows:

193F—15.3(543D) Requirements for a supervisory appraiser.

15.3(1) Effective January 1, 2006, a A supervisory appraiser shall:

~~1. a.~~ Have a minimum of ~~two~~ three years of experience as a certified appraiser, ~~and be in good standing in all states jurisdictions, and have had no disciplinary action that affects the supervisor's legal eligibility to engage in appraisal practice~~ be actively certified in Iowa during all periods when providing supervision.

~~2. b.~~ Have a maximum of three trainees and shall register with the board the name, office address and starting date of each trainee, as well as any termination dates (voluntary or involuntary).

~~3. c.~~ Be responsible for the training and direct supervision of the associate appraiser by accepting full responsibility for the appraisal report by signing and certifying that the report is in compliance with USPAP.

~~4. d.~~ Keep copies of associate appraiser reports for a period of at least five years or at least two years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last.

~~e.~~ Comply with all applicable requirements of the Appraiser Qualifications Board.

15.3(2) For purposes of this rule, "good standing" means the absence of a disciplinary action in any jurisdiction which affects the appraiser's legal eligibility to engage in an appraisal practice as a certified appraiser. Examples of disciplinary actions that would affect an appraiser's legal eligibility to engage in an appraisal practice as a certified appraiser include revocation, suspension, or voluntary surrender to resolve a disciplinary investigation or action, or a practice restriction that limits the type, geographic location, or scope of an appraiser's practice or an appraiser's authority to practice without the supervision of another certified appraiser. An appraiser subject to such a disciplinary action would not be in good standing until three years after the successful completion or termination of the sanction which affected the appraiser's legal eligibility to engage in an appraisal practice as a certified appraiser.

15.3(3) An appraisal experience log shall be maintained jointly by the supervisory appraiser and the associate appraiser as more fully described in rule 193F—4.2(543D).

15.3(4) Effective January 1, 2015, a certified appraiser shall perform as a supervisory appraiser in Iowa only if the appraiser has completed a course that, at a minimum, complies with the specifications for course content established by the Appraiser Qualifications Board. The course is to be completed before the certified appraiser provides supervision.

ITEM 4. Amend rule 193F—15.4(543D) as follows:

193F—15.4(543D) Restrictions. The board may prohibit or further restrict an appraiser's authorization to act as a supervisory appraiser ~~while the appraiser is under an unsatisfactory~~ if the board deems such action necessary to protect the public as part of the remedies or sanctions imposed in a disciplinary order action.

ARC 0742C

AGING, DEPARTMENT ON[17]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 231.14, 231.23 and 17A.3, the Department on Aging hereby amends Chapter 1, "Introduction, Abbreviations and Definitions," Iowa Administrative Code.

The amendments work toward the creation of a single and comprehensive chapter of definitions applicable to all of the Department's rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 9, 2013, as **ARC 0551C**. These amendments have been updated since publication of the Notice to include the definitions of "direct costs" and "indirect costs."

The Commission on Aging adopted these amendments on April 26, 2013.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 231.

These amendments will become effective on June 19, 2013.

The following amendments are adopted.

ITEM 1. Adopt the following new definitions in rule **17—1.5(231)**:

"*Administration costs*" means all direct and indirect costs incurred by a grantee in managing a grant, including but not limited to all audit and board expenses incurred in the support of an area agency on aging director.

"*Direct costs*" means those costs that can be identified specifically with a particular final cost objective.

"*Indirect costs*" means those costs that are: (1) incurred for a common or joint purpose benefiting more than one cost objective, and (2) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved.

"*Local sources*" means the equivalent cash value of third-party in-kind contributions (e.g., property or services which benefit a grant-supported project or program and which are contributed by nonfederal third parties without a charge to the grantee or subgrantee under the grant or subgrant) and cash resources, or both, made available by local sources (e.g., local public funds, other local cash, and program income) representing that portion of the costs of a project or program receiving funds from state appropriations.

"*Nutrition Services Incentive Program*" or "*NSIP*" means the Nutrition Services Incentive Program established under the Older Americans Act.

"*Plan of correction*" means a plan developed by an area agency on aging and approved by the department which describes the actions the area agency on aging shall take to correct deficiencies arising from the agency's failure to perform and specifies the date by which those deficiencies shall be corrected.

"*Priority services*" means access services (including case management, transportation, outreach, and information and assistance), in-home services, and legal assistance services.

"*Program income*" or "*contributions*" means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under state-funded or federally funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Except as otherwise provided in the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, or discounts or interest earned on any of them. Furthermore, program income does not include taxes, special assessments, levies, and fines raised by governmental recipients.

AGING, DEPARTMENT ON[17](cont'd)

ITEM 2. Rescind the definition of “Rural” in rule **17—1.5(231)**.

[Filed 4/26/13, effective 6/19/13]

[Published 5/15/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/15/13.

ARC 0743C

AGING, DEPARTMENT ON[17]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 231.14, 231.23 and 17A.3, the Department on Aging hereby rescinds Chapter 5, “Department Fiscal Policy,” and adopts a new Chapter 5, “Department Fiscal Operations,” Iowa Administrative Code.

The rules in new Chapter 5 mandate that the Department and area agencies on aging comply with existing federal and state laws, rules, and regulations in regard to aspects of fiscal management and oversight. The rules change the process and procedure used to develop and adopt distribution formulas for Older Americans Act funds and state appropriations. The chapter includes a rule that allows the Department to mandate a plan of correction and impose remedies for fiscal failure to perform.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 9, 2013, as **ARC 0550C**. The Department received no written comments. These rules are identical to those published under Notice of Intended Action.

The Commission on Aging adopted these rules on April 26, 2013.

After analysis and review of this rule making, no impact on jobs has been found.

These rules are intended to implement Iowa Code chapter 231.

These rules will become effective on June 19, 2013.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 5] is being omitted. These rules are identical to those published under Notice as **ARC 0550C**, IAB 1/9/13.

[Filed 4/26/13, effective 6/19/13]

[Published 5/15/13]

[For replacement pages for IAC, see IAC Supplement 5/15/13.]

ARC 0744C

AGING, DEPARTMENT ON[17]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 231.14, 231.23 and 17A.3, the Department on Aging hereby amends Chapter 6, “Area Agency on Aging Planning and Administration,” Iowa Administrative Code.

These amendments incorporate the following particulars:

1. The Department on Aging will be able to require area plans for a period of two years and up to four years. Currently, area agencies on aging are required to submit four-year plans.
2. Area agencies on aging will be allowed flexibility to determine the extent to which a full-time director is necessary. Currently, each area agency on aging is required to have a full-time director.
3. The Department on Aging will not need to dedesignate an area agency on aging for its failure to meet service standards. Dedesignation is still an option under rule 17—4.6(231), but this change will allow flexibility in response to deficiencies.

AGING, DEPARTMENT ON[17](cont'd)

4. Rule 17—6.14(231) related to priority service expenditures is rescinded and has been incorporated in new 17—Chapter 5 (see **ARC 0743C** herein). Subrule 6.14(2) pertaining to hearings related to priority service expenditures has been incorporated into subrule 6.2(7).

5. In Item 6, language in the rule pertaining to entrepreneurial activities was found to be inconsistent and unenforceable and is stricken. Rescission of subrules 6.15(3) to 6.15(5) will clarify for area agencies on aging what is necessary to perform entrepreneurial activities.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 6, 2013, as **ARC 0640C**. The Department received no written comments. The only change from the Notice of Intended Action was the addition of new Item 5 to correct cross references affected by renumbering.

The Commission on Aging adopted these amendments on April 26, 2013.

After analysis and review of this rule making, no adverse impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 231.

These amendments will become effective on June 19, 2013.

The following amendments are adopted.

ITEM 1. Amend rule 17—6.2(231) as follows:

17—6.2(231) Area plan.

6.2(1) Area plan. Each AAA shall develop and administer an area plan.

6.2(2) Duration and format of the area plan.

a. The area plan shall be for ~~the~~ a minimum of a two-year and a maximum of a four-year period specified by the department, with annual updates.

b. Uniform area plan format. All AAA shall submit an area plan or plan amendment to the department in accordance with the uniform area plan format, other instructions issued by the department, this chapter, and the federal Act.

6.2(3) and 6.2(4) No change.

6.2(5) Plan content. The area plan shall, at a minimum, contain the following information:

a. Assurance that the AAA agrees to abide by the requirements of the federal Act and all other applicable laws and rules; and

b. Objectives and budget for each year of the designated ~~four-year~~ period and methods to obtain those objectives; and

c. Client estimates. Area agencies shall estimate the number of older individuals with the characteristics identified in Form 3 A 1 of an IAPI.

6.2(6) No change.

6.2(7) Procedures for area plans, plan amendments and revisions.

a. *Public hearing(s).* The AAA shall hold at least one public hearing on the area plan and all plan amendments as required in this chapter. Priority services shall appear as a distinct agenda item for any hearing.

(1) The public hearing(s) shall be held prior to submission of the area plan or amendment(s) at a time which permits older individuals, public officials, and other interested parties reasonable opportunity to participate. The hearing(s) shall be held at a barrier-free, fully accessible location.

(2) The AAA shall advertise the hearing by sending notice to all known groups of older individuals, PSA public officials, and other interested parties. The AAA shall also publish a notice in the official newspapers as designated for each county served by the PSA. The notice shall include the time, date, and location of the public hearing.

(3) The hearing on the area plan shall include the priority services and priority services requirement as a distinct agenda item with a specific time set for the beginning of that portion of the hearing.

b. *Review and comment by the advisory council.*

(1) The AAA shall submit the area plan, amendments and revisions for review and comment to the AAA advisory council.

(2) The official representative of the AAA shall sign the plan, amendment or revision to signify that the AAA has completed all of the requirements of this chapter. The AAA shall then submit the area plan, amendment or revision to the department for review.

AGING, DEPARTMENT ON[17](cont'd)

6.2(8) to 6.2(10) No change.

ITEM 2. Amend rule 17—6.3(231) as follows:

17—6.3(231) Area agency administration.

6.3(1) ~~Full-time director~~ *Director*. The AAA shall employ a qualified ~~full-time~~ director and may employ other staff as necessary to manage and monitor the area plan.

6.3(2) *Director's responsibility*. It is the responsibility of the AAA director to:

- a. Ensure that all AAA duties as outlined in the federal Act, state law, this chapter and other rules promulgated by any agency having jurisdiction are performed;
- b. Develop the area plan;
- c. Implement organizational operations;
- d. Budget for services and operations;
- e. Coordinate implementation of services; and
- f. Monitor and evaluate services.

6.3(3) to 6.3(5) No change.

ITEM 3. Rescind rules 17—6.13(231) and 17—6.14(231).

ITEM 4. Renumber rules 17—6.15(231) to 17—6.18(231) as 17—6.13(231) to 17—6.16(231).

ITEM 5. Amend renumbered subrules 6.13(1) and 6.13(2) as follows:

6.13(1) An AAA shall request a waiver from the priority service expenditures in rule 17—~~subrule 5.3(3)~~ 5.5(231) if it does not propose sufficient funding to allow older individuals to have convenient access to a service. The waiver request shall be submitted with the plan or plan amendment pursuant to applicable procedures under 17—Chapter 11.

6.13(2) The commission, in approving an area plan or a plan amendment, may, upon recommendation of the director, waive the requirement of rule 17—~~6.14(231)~~ 5.5(231) for any category of service for which the AAA demonstrates the following:

- a. and b. No change.

ITEM 6. Amend renumbered rule 17—6.15(231) as follows:

17—6.15(231) Entrepreneurial activities of AAA. An AAA considering entrepreneurial activities must carefully examine the activity to ensure compatibility with its designation as an AAA. The following shall apply to all AAA, unless otherwise prohibited by statute, rule or order:

6.15(1) *Demonstrated need—use of funds.* An AAA may engage in entrepreneurial activities if the activity is in response to a demonstrated need and the funds raised by such activities are used for one of the following purposes:

- a. To further extend services and opportunities for older individuals; or
- b. To fund new services and opportunities for older individuals provided that these services or opportunities are compatible with the AAA functions and goals.

6.15(2) *Restrictions.* ~~An AAA shall not use funds received from the department in connection with entrepreneurial activities.~~ The following restrictions shall apply to an AAA's engagement in entrepreneurial activities:

- a. Entrepreneurial activities shall not be undertaken until they have been reviewed by the advisory council and approved by the AAA governing board.
- b. An AAA that engages in entrepreneurial activities shall not create the impression that the activity is being carried on under governmental authority.
- c. Funds received as a result of entrepreneurial activities shall be monitored and accounted for according to generally accepted accounting and auditing practices commensurate with the activities.
- d. Entrepreneurial activities shall be pursued only if the duties and responsibilities required of AAA in this chapter are consistently provided by the AAA in a capable manner.
- e. ~~Entrepreneurial activities shall benefit all eligible persons in the PSA, particularly older individuals in the greatest economic and social need and low-income minority persons.~~ Entrepreneurial

AGING, DEPARTMENT ON[17](cont'd)

activities pursued by an AAA and groups or organizations funded by an AAA shall not have, nor present the appearance of, a conflict of interest.

f.—Entrepreneurial activities shall not utilize funds received from the department for direct costs.

~~6.15(3) Department review.~~

a.—An AAA shall inform the department in writing not less than 160 calendar days prior to the initiation of an entrepreneurial activity of an ongoing nature. The notification shall describe the proposed activity, proposed source of funds, and the needs being addressed.

b.—The department shall respond in writing within 30 calendar days to acknowledge receipt of the information, request clarification, or request a delay in implementation. For informational purposes, the department shall provide a copy of the response to the commission.

c.—An AAA that receives no response from the department within 30 days may assume that no additional submission of information is required.

d.—If unresolved issues remain after 60 calendar days of receipt of the information, the commission will be informed of those issues at the next commission meeting.

~~6.15(4) Commission or department action.~~ An AAA contracting for entrepreneurial activities shall:

a.—Provide the contract to the department for review prior to signing; and

b.—Include the activities in the area plan, plan amendments or revisions; and

c.—Require a minimum payment from the contractor to fully cover all costs of the activity, including overhead and administrative costs, to eliminate the possibility of use of Title III funds.

~~6.15(5) Community interest.~~

a.—Entrepreneurial activities pursued by an AAA and groups or organizations funded by an AAA shall not have, nor present appearance of, conflict of interest.

b.—An AAA shall work cooperatively with community leaders, groups and organizations in order to participate in entrepreneurial activities.

[Filed 4/26/13, effective 6/19/13]

[Published 5/15/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/15/13.

ARC 0738C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Pursuant to the authority of Iowa Code section 159.5, the Department of Agriculture and Land Stewardship hereby amends Chapter 13, "Renewable Fuel Infrastructure Board—Organization," Chapter 14, "Renewable Fuel Infrastructure Program for Retail Motor Fuel Sites," Chapter 15, "Renewable Fuel Infrastructure Program for Terminal Grants," and Chapter 16, "Renewable Fuel Infrastructure Program Administration," Iowa Administrative Code.

The amendments update citations and implementation sentences for the provisions.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0645C** on March 20, 2013. No comments were received from the public. These amendments are identical to the amendments published under Notice of Intended Action.

After analysis and review of this rule making, no adverse impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 159 and 159A.

These amendments will become effective June 19, 2013.

The following amendments are adopted.

ITEM 1. Amend rule 21—13.1(84GA,SF531), introductory paragraph, as follows:

21—13.1(84GA,SF531 159A) Definitions. As used in these rules, unless the context otherwise requires, the definitions in Iowa Code section 15G.201 as amended by 2011 Iowa Acts, Senate File 531, 159A.11 shall apply to this chapter and to 21—Chapters 14, 15, and 16. The following definitions shall also apply:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

ITEM 2. Amend rule ~~21—13.1(159A)~~, definition of “Board,” as follows:

“Board” means the renewable fuel infrastructure board established by Iowa Code section ~~15G.202~~ as amended by 2011 Iowa Acts, Senate File ~~534~~ 159A.13.

ITEM 3. Amend rule 21—13.2(84GA,SF531), parenthetical implementation statute, as follows:

~~21—13.2(84GA,SF531~~ 159A) Renewable fuel infrastructure board.

ITEM 4. Amend ~~21—Chapter 13~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code section ~~15G.202~~ and 2011 Iowa Acts, Senate File ~~534~~ 159A.13.

ITEM 5. Amend rule 21—14.1(84GA,SF531), parenthetical implementation statute, as follows:

~~21—14.1(84GA,SF531~~ 159A) Purpose.

ITEM 6. Amend rule 21—14.2(84GA,SF531), parenthetical implementation statute, as follows:

~~21—14.2(84GA,SF531~~ 159A) Eligible applicants.

ITEM 7. Amend ~~21—Chapter 14~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code section ~~15G.203~~ and 2011 Iowa Acts, Senate File ~~534~~ 159A.14.

ITEM 8. Amend rule 21—15.1(84GA,SF531), parenthetical implementation statute, as follows:

~~21—15.1(84GA,SF531~~ 159A) Purpose.

ITEM 9. Amend rule 21—15.2(84GA,SF531), parenthetical implementation statute, as follows:

~~21—15.2(84GA,SF531~~ 159A) Eligible applicants.

ITEM 10. Amend ~~21—Chapter 15~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code section ~~15G.204~~ and 2011 Iowa Acts, Senate File ~~534~~ 159A.15.

ITEM 11. Amend rule 21—16.1(84GA,SF531), parenthetical implementation statute, as follows:

~~21—16.1(84GA,SF531~~ 159A) Allocation of awards by congressional district.

ITEM 12. Amend rule 21—16.2(84GA,SF531), parenthetical implementation statute, as follows:

~~21—16.2(84GA,SF531~~ 159A) Form of award available; award amount.

ITEM 13. Amend rule 21—16.3(84GA,SF531), parenthetical implementation statute, as follows:

~~21—16.3(84GA,SF531~~ 159A) Application process.

ITEM 14. Amend rule 21—16.4(84GA,SF531), parenthetical implementation statute, as follows:

~~21—16.4(84GA,SF531~~ 159A) Review process.

ITEM 15. Amend rule 21—16.5(84GA,SF531), parenthetical implementation statute, as follows:

~~21—16.5(84GA,SF531~~ 159A) Contract administration.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

ITEM 16. Amend **21—Chapter 16**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~15G.201, 15G.202 and 15G.205~~ as amended by 2011 Iowa Acts, Senate File 531, and Iowa Code sections ~~15G.203 and 15G.204~~ 159A.11 to 159A.16.

[Filed 4/24/13, effective 6/19/13]

[Published 5/15/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/15/13.

ARC 0733C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**Adopted and Filed**

Pursuant to the authority of Iowa Code section 189A.7(8), the Department of Agriculture and Land Stewardship hereby amends Chapter 76, "Meat and Poultry Inspection," Iowa Administrative Code.

The amendments update references to federal regulations in order to retain recognition of the state meat and poultry program. The federal requirement to have and maintain a recall plan is also added in Item 2.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0643C** on March 6, 2013. No comments were received from the public. These amendments are identical to the amendments published under Notice of Intended Action.

After analysis and review of this rule making, no adverse impact on jobs has been found.

These amendments are intended to implement Iowa Code section 159.5(8) and Iowa Code chapter 189A.

These amendments will become effective June 19, 2013.

The following amendments are adopted.

ITEM 1. Amend rule 21—76.1(189A), introductory paragraph, as follows:

21—76.1(189A) Federal Wholesome Meat Act regulations adopted. Part 301 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, ~~2009~~ 2013, is hereby adopted in its entirety by reference; and in addition thereto, the following subsections shall be expanded to include:

ITEM 2. Amend rule 21—76.2(189A) as follows:

21—76.2(189A) Federal Wholesome Meat Act regulations adopted. Part 303, Part 304, Part 305, Part 306, Parts 308 through 320, Part 329, Part 416, Part 417, ~~Part 418~~, Part 424, Part 430, Part 441 and Part 442 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, ~~2009~~ 2013, are hereby adopted in their entirety by reference. Part 307 except Sections 307.5 and 307.6 and Part 325 except Sections 325.3 and 325.12 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, ~~2009~~ 2013, are hereby adopted in their entirety by reference. Part 500 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, ~~2009~~ 2013, is adopted by reference, except that references in Sections 500.5, 500.6, 500.7, and 500.8 to the federal Uniform Rules of Practice are not adopted.

ITEM 3. Amend rule 21—76.3(189A), introductory paragraph, as follows:

21—76.3(189A) Federal Poultry Products Inspection Act regulations adopted. Part 381, Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, ~~2009~~ 2013, is hereby adopted in its entirety with the following exceptions: 381.96, 381.97, 381.99, 381.101, 381.102, 381.104, 381.105, 381.106, 381.107, 381.128, Subpart R, Subpart T, Subpart V, Subpart W; and in addition thereto, the following subsections shall be expanded to include:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

ITEM 4. Amend rule 21—76.4(189A) as follows:

21—76.4(189A) Inspection required. Every establishment except as provided in Section 303.1(a), (b), (c) and (d) of Title 9, Chapter III, Subchapter A, of the Code of Federal Regulations, revised as of January 1, ~~2009~~ 2013, in which slaughter of livestock or poultry, or the preparation of livestock products or poultry products is maintained for transportation or sale in commerce, shall be subject to the inspection and other requirements of those parts of Title 9, Chapter III, Subchapter A, of the Code of Federal Regulations, revised as of January 1, ~~2009~~ 2013, enumerated in rules 21—76.1(189A), 21—76.2(189A) and 21—76.3(189A).

This rule is intended to implement Iowa Code sections 189A.4 and 189A.5.

ITEM 5. Amend rule 21—76.13(189A) as follows:

21—76.13(189A) Voluntary inspections of exotic animals. Every person wishing to obtain voluntary inspection of exotic animals shall comply with the regulations adopted in this rule.

Part 352 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, ~~2009~~ 2013, is hereby adopted in its entirety by reference.

This rule is intended to implement Iowa Code chapter 189A.

ITEM 6. Amend rule 21—76.14(189A) as follows:

21—76.14(189A) Federal Wholesome Meat Act regulations adopted for the regulation of farm deer.

1. All federal regulations adopted in 21—76.1(189A).
2. All federal regulations adopted in 21—76.2(189A), except Part 303 and Part 307.4(c) of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, ~~2009~~ 2013.

This rule is intended to implement Iowa Code chapters 170 and 189A.

[Filed 4/17/13, effective 6/19/13]

[Published 5/15/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/15/13.

ARC 0735C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 225C.6(1) and 2012 Iowa Acts, chapter 1120, section 38, the Department of Human Services amends Chapter 25, "Disability Services Management," Iowa Administrative Code.

These amendments establish criteria for exempting counties from joining into regions to administer mental health and disability services. The Department is charged with implementing the redesign of the mental health and disability services (MHDS) system into a regionally administered, locally delivered service system. The authority to accept applications for an exemption is repealed effective July 1, 2013.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin as **ARC 0575C** on February 6, 2013. The amendments were also Adopted and Filed Emergency and published as **ARC 0576C** on the same date. The Adopted and Filed Emergency amendments became effective January 8, 2013.

The Department received multiple comments on these amendments from two respondents.

The first respondent had three comments.

In the first comment, the first respondent stated that the rules go beyond what is expected for core services in the MHDS system. The rules list six specific evidence-based services that go beyond the list of core services. These services must be independently verified to meet fidelity standards, and what this means is concerning.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Department's response is that Iowa Code section 331.389(1)"b" requires that a county exempted from being required to enter a regional service system furnish evidence that the county has the capacity to provide required core services and perform required functions. Iowa Code section 331.397(5) states that providers of core services must demonstrate competencies necessary for evidenced-based practices. Iowa Code section 331.389(1)"b" states that the Director shall identify criteria for evaluating evidence provided by counties applying for an exemption. Subrule 25.91(4) establishes criteria for evaluating whether the county can provide independent verification of fidelity to six nationally recognized and accepted evidence-based practices endorsed by the Substance Abuse and Mental Health Services Administration.

The second comment from the first respondent stated that the rules require the applicant county to demonstrate that it performs better than the statewide average on eight different criteria and the legislation requires a county to provide services in a manner that is as cost-effective and with outcomes that are at least equal to what could be provided to residents if the services were provided in a regional system. The region would enter into a contract with outcomes so the single county should have the same expectation.

The Department's response is that Iowa Code section 331.389(1)"b" requires that services provided by counties that are exempted from forming into a region must be as cost-effective and with outcomes at least equal to what could be provided in a regional service system. The Iowa Code further states that the Director shall identify criteria for evaluating the evidence provided by counties applying to be exempted from forming into a region. Since the MHDS regional system is not formed, subrule 25.91(5) establishes criteria using available data as reported by counties in their 2012 county reports and establishes the statewide average as the criteria for service capacity.

The first respondent's final comment was that there is nothing to measure a county against until regions are operational. The state's current data is based on single counties and legal settlement. In the future, the data will be based on data related to services in an individual's county of residency. The rules set an arbitrary and capricious standard that has no relevance as in the redesigned MHDS system. This data should not be used to make an arbitrary decision but used as a guide to evaluate where a county is on a continuum and used in the development of a contract between the state and the county.

The Department's response is that the data used in subrule 25.91(5) is not arbitrary and is relevant to the redesigned MHDS system.

The second respondent had four comments concerning the proposed amendments.

The second respondent's first comment was that the rules require counties applying for an exemption to have all core services in place and to have an adequate number of providers. It is suggested that the rules require an applicant to demonstrate the current availability of at least 6 of the 12 core service domains and provider competencies.

The Department's response to this comment is that Iowa Code section 331.389(1)"b" requires that counties being approved for an exemption from forming into a region have the capacity to provide the required core services and perform required functions. Iowa Code section 331.397 identifies the core service domains required by the MHDS regions. Rule 441—25.91(331) provides criteria for assessing whether or not the county meets the requirements of the Iowa Code.

The second respondent's second comment was that the rules require that an applicant demonstrate the capability of providing five evidenced-based service models, all of which are related to serving individuals with a mental illness diagnosis and none of which are for individuals with intellectual or developmental disabilities. The respondent suggested that the applicant describe the availability of at least three evidenced-based practices with fidelity measures and suggested not prescribing which evidenced-based models must be practiced.

The Department's response is that Iowa Code section 331.389(1)"b" requires that a county exempted from being required to enter a regional service system furnish evidence that the county has the capacity to provide required core services and perform required functions. Iowa Code section 331.397(5) states that providers of core services must demonstrate competencies necessary for evidenced-based practices. Iowa Code section 331.389(1)"b" states that the Director shall identify criteria for evaluating evidence provided by counties applying for an exemption. Subrule 25.91(4) establishes criteria for evaluating whether the county can provide independent verification of fidelity to six nationally recognized and

HUMAN SERVICES DEPARTMENT[441](cont'd)

accepted evidence-based practices endorsed by the Substance Abuse and Mental Health Services Administration.

The second respondent's third comment was that the Department has identified measures to determine service capacity and has not provided the information so the counties know where they stand on these measures. If the Department is using county reports, the Department should use caution in applying this data. It is based on legal settlement, not residency which will be in effect July 1, 2013, and does not measure just non-Medicaid-funded services.

The Department's response to this comment is that the Department has shared the measures for determining service capacity with all counties that have submitted letters of intent to be exempted from forming into a region. Iowa Code section 331.389(1)"b" requires that services provided by counties that are exempted from forming into a region must be as cost-effective and with outcomes at least equal to what could be provided in a regional service system. The Iowa Code further states that the Director shall identify criteria for evaluating the evidence provided by counties applying to be exempted from forming into a region. Since the MHDS regional system is not formed, subrule 25.91(6) establishes criteria using available data as reported by counties in their 2012 county reports and establishes the statewide average as the criteria for network sufficiency.

The second respondent's final comment was that using clear lines of accountability is too restrictive and does not allow for other provisions of the legislation (2012 Iowa Acts, Senate File 2315), including the ability for a region to contract for management of the system or allowing counties to have shared staff.

The Department's response to this comment is that Iowa Code section 331.389 requires that counties applying for an exemption from forming into a region must furnish evidence of clear lines of accountability. That accountability can be to a contracted body that has a governing board and chief executive officer.

No changes were made to the proposed amendments based on the comments presented by the respondents. These amendments are identical to those published under the Notice of Intended Action and Adopted and Filed Emergency.

The Mental Health and Disability Services Commission adopted these amendments on April 18, 2013.

These amendments do not provide for waivers in specified situations because the legislation does not specifically allow for waivers. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 331.389.

These amendments will become effective August 1, 2013, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 25**, preamble, as follows:

This chapter provides for reporting of county expenditures, development and submission of management plans, data collection, and applications for funding as they relate to county service systems for people with mental illness, chronic mental illness, ~~mental retardation~~, intellectual disabilities, developmental disabilities, or brain injury.

ITEM 2. Reserve rules **441—25.82** to **441—25.90**.

ITEM 3. Adopt the following new Division VIII title in **441—Chapter 25**:

DIVISION VIII
CRITERIA FOR EXEMPTING COUNTIES FROM JOINING INTO REGIONS
TO ADMINISTER MENTAL HEALTH AND DISABILITY SERVICES

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 4. Adopt the following new rule 441—25.91(331):

441—25.91(331) Exemption from joining into mental health and disability services region.

25.91(1) Definitions.

“Applicant” means a single county or two counties that submit an application for an exemption from the requirement to join a region of three or more contiguous counties.

“Clear lines of accountability” means the governing board’s organizational structure makes it evident that the ultimate responsibility for the administration of non-Medicaid-funded mental health and disability services lies with the governing board and that the governing board directly and solely supervises the organization’s chief executive officer.

“Coordinator of disability services” means a person who meets the qualifications of a coordinator of disability services as defined in Iowa Code section 331.390(3) “b” and is responsible for ensuring that individuals receive effective service coordination consistent with the county’s or counties’ management plan.

“Core services” means core services mandated to be provided by the regional service system as defined in Iowa Code section 331.397.

“Department” means the Iowa department of human services.

“Director” means the director of the department.

“Evidence-based practice” means interventions that have been rigorously tested, have yielded consistent, replicable results, and have proven safe, beneficial, and effective.

“Penetration rate,” for the purposes of this rule, means the per capita number of adults in the adult population of a county who are receiving mental health and disability services.

“Reasonably close proximity” means a distance of 100 miles or less or a driving distance of two hours or less from the county seat or county seats of the applicant.

“Trauma-informed care” means services that are based on an understanding of the vulnerabilities or triggers of individuals who have experienced trauma, recognize the role trauma has played in the lives of those individuals, are supportive of trauma recovery, and avoid retraumatization.

25.91(2) Application for exemption from the requirement to form a region of three or more contiguous counties. The following requirements apply to an application for exemption from the requirement to form a region of three or more contiguous counties:

a. The applicant shall submit a written statement that the applicant intends to apply for an exemption from the requirement to form a region of three or more contiguous counties. The statement must be signed by the chairperson of the county board of supervisors of the applicant’s county. The signed written statement of intent must be received by the department on or before May 1, 2013, at 4:30 p.m.

b. The applicant shall submit a written application on forms specified by the department with required supporting documentation. The department shall only accept applications that are complete, signed by the applicant’s chairperson of the county board of supervisors, dated, and received by the department on or before June 30, 2013, at 4:30 p.m.

c. The director of the department shall issue a decision on the application within 45 days of receiving the application. The director shall deny an application if the application does not meet the criteria described in Iowa Code or rule.

25.91(3) Applicant criteria. The application shall include written documentation and evidence that the applicant has:

a. The capacity to provide required core services and perform required functions described in Iowa Code section 331.397.

b. A contract with a community mental health center or a federally qualified health center that provides psychiatric and outpatient mental health services in the applicant’s county or counties or written intent from the community mental health center or federally qualified health center to enter into such a contract.

c. A contract with a hospital with an inpatient psychiatric unit or a state mental health institute located in or within reasonably close proximity that has the capacity to provide inpatient services to the

HUMAN SERVICES DEPARTMENT[441](cont'd)

applicant or written intent from the state mental health institute or inpatient psychiatric unit to enter into such a contract.

d. An administrative structure with clear lines of accountability. A description of the applicant's administrative functions shall be included with the application.

e. Taken steps to determine and demonstrate that forming a region of three or more contiguous counties is not workable.

25.91(4) *Core services and required functions standards.* The department shall review the application to determine if the applicant has provided written documentation and evidence for the availability of:

a. A 24-hour, 7-day-a-week, 365-days-per-year telephone response system for mental health and disability-related emergencies in the applicant's county or counties.

b. Service providers in the applicant's county or counties that demonstrate the capability of providing evidence-based practices that the applicant has independently verified meet established fidelity to evidence-based service models including, but not limited to:

- (1) Assertive community treatment or strengths-based case management.
- (2) Integrated treatment of co-occurring substance abuse and mental health disorders.
- (3) Supported employment.
- (4) Family psychoeducation.
- (5) Illness management and recovery.
- (6) Permanent supportive housing.

c. Service providers in the applicant's county or counties that are trained to provide effective services to persons with two or more of the following co-occurring conditions: mental illness, intellectual disability, developmental disability, brain injury, or substance use disorder. Training for serving persons with co-occurring conditions shall be training identified by the Substance Abuse and Mental Health Services Administration, the Dartmouth Psychiatric Research Center or other generally recognized professional organization specified in the application.

d. Service providers in the applicant's county or counties that are trained to provide effective trauma-informed care. Trauma-informed care training shall be training identified by the National Center for Trauma-Informed Care or other generally recognized professional organization specified in the application.

25.91(5) *Service capacity.* The department shall review the material provided in the application and by the applicant and other counties in their required county reports to determine if the applicant demonstrates that it has:

- a. Sufficient financial resources to fund required core services.
- b. A penetration rate that is at least equal to or exceeds the statewide per capita average for individuals with a mental illness or individuals with an intellectual disability.
- c. A per capita use of inpatient psychiatric hospital services that is less than or equal to the statewide per capita average.
- d. A per capita use of intermediate care facilities for individuals with intellectual disabilities that is less than or equal to the statewide per capita average.
- e. A per capita use of outpatient mental health services that is greater than or equal to the statewide per capita average.
- f. A per capita use of supported community living services that is greater than or equal to the statewide per capita average.
- g. An average cost of service per individual served that is equal to or less than the statewide average.
- h. Administrative costs, as a percentage of non-Medicaid service expenditures, that are less than or equal to the statewide average.

25.91(6) *Provider network sufficiency.* The department shall review the application to determine if the applicant provided written documentation and evidence of:

a. A contract with a community mental health center that provides services in the applicant's county or counties or a federally qualified health center that provides psychiatric and outpatient mental

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health services in the applicant's county or counties or written intent by a community mental health center or federally qualified health center to enter into such a contract.

b. Contracts with licensed and accredited providers to provide each service in the required core service domains or written intent by providers to enter into such contracts.

c. Adequate numbers of licensed and accredited providers to ensure availability of core services so that there is no waiting list for services due to lack of available providers.

d. A contract with an inpatient psychiatric hospital unit or state mental health institute within reasonably close proximity or written intent by an inpatient psychiatric hospital unit or state mental health institute to enter into such a contract.

25.91(7) to 25.91(9) Reserved.

25.91(10) Staffing. The department shall review the application to determine if the applicant provided written documentation and evidence of:

a. Clear lines of accountability.

b. The inclusion of one or more coordinators of disability services on the county administrator staff.

25.91(11) Reserved.

25.91(12) Determination that formation of a region is unworkable. The department shall review the application to determine if the applicant has provided documentation and convincing evidence that the applicant has evaluated the feasibility of forming into a region of three or more contiguous counties and that forming into such a region is unworkable.

25.91(13) Compliance with requirements of a mental health and disability services region. The applicant shall continuously fulfill all of the requirements of a region under Iowa Code chapters 331 and 225C for a regional service system, regional service system management plan, regional governing board, and regional administrator and any other requirements applicable to a region of counties providing local mental health and disability services. If the applicant does not fulfill these requirements, the department may address the deficiencies in the following order:

a. Require compliance with a corrective action plan that may include, but is not limited to, participation in technical assistance provided or arranged by the department, revision of the regional management plan, or other corrective actions required by the department.

b. Reduce the amount of the annual state funding provided through the mental health and disabilities regional services fund for the regional service system, not to exceed 15 percent of the amount of the annual state funding.

c. Withdraw approval for the county exemption.

This rule is intended to implement Iowa Code section 331.389.

[Filed 4/19/13, effective 8/1/13]

[Published 5/15/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/15/13.

ARC 0741C

IOWA PUBLIC INFORMATION BOARD[497]

Adopted and Filed

Pursuant to the authority of 2012 Iowa Acts, chapter 1115, section 9, the Iowa Public Information Board hereby adopts Chapter 1, "Organization and General Administration," Chapter 2, "Complaint Investigation and Resolution Procedures," Chapter 3, "Declaratory Orders," Chapter 4, "Contested Cases," Chapter 5, "Petitions for Rule Making," Chapter 6, "Agency Procedures for Rule Making," and Chapter 7, "Fair Information Practices," Iowa Administrative Code.

The Board was created under 2012 Iowa Acts, Senate File 430, as a body to provide an alternative means to "secure compliance with and enforcement of the requirements of chapters 21 and 22"—the laws governing open meetings and public records. Board members were appointed by the Governor

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soon after enactment of Senate File 430. Under the enabling Act, the Board will become effective on July 1, 2013, and is promulgating this full set of rules to be ready to conduct business on July 1. The rules cover the following matters:

Chapter 1: Organization and General Administration. These rules describe the Board's structure and organization, including requirements for requesting and processing advisory opinions and addressing conflicts of interest of Board members.

Chapter 2: Complaint Investigation and Resolution Procedures. These rules describe the requirements for filing and processing written complaints as well as investigating complaints, assessing civil penalties, and reaching settlements.

Chapter 3: Declaratory Orders. These rules delineate the procedures for petitioning the Board for a declaratory order which may bind the requester based on the facts presented.

Chapter 4: Contested Cases. These rules set out the procedures that will apply in the event that a complaint is not resolved informally and results in charges by the Board that proceed to hearing.

Chapter 5: Petitions for Rule Making. These rules describe the procedures that any person or agency may utilize to request the Board to adopt specific rules, which may be new rules or the amendment or repeal of existing rules.

Chapter 6: Agency Procedures for Rule Making. These rules describe the procedures that apply in any rule making undertaken by the Board under Iowa Code chapter 17A.

Chapter 7: Fair Information Practices. These rules describe the records that will be maintained by the Board, including which records are open, which records are confidential, and which records contain personally identifiable information about members of the public. In addition, the rules describe the procedures for requesting access to records and for requesting that records provided to the Board be kept confidential; the procedures for making additions, dissents, or objections to records maintained by the Board; the uses to which the records may be put; and the conditions under which the records may be released.

Chapters 3 to 7 are based on the Uniform Rules on Agency Procedure which were developed by a nine-member task force appointed by Governor Branstad in 1985. The task force drafted uniform rules suitable for adoption by all or most state agencies. The Uniform Rules on Agency Procedure were later amended by the Iowa Attorney General's Office to comply with the 1999 amendments to the Iowa Administrative Procedure Act.

Notice of Intended Action was published in the March 20, 2013, Iowa Administrative Bulletin as **ARC 0644C**.

A public hearing was conducted on April 9, 2013. No public comments were made at the April 9, 2013, public hearing. Three comments were submitted in writing. Comments were also made by members of the Administrative Rules Review Committee (ARRC).

As a result of the comments received on the proposed rules, the Board made the following changes to the rules published under Notice of Intended Action:

1. In subrule 1.3(2), added that the Board advice to a government official or a lawful custodian of a public record constitutes a defense to proceedings before the Board.
2. In rule 497—1.4(84GA, ch1115), deleted the words "rule making" from the conflict of interest provision.
3. In paragraph 2.2(4)"c," changed the sentence structure for clarity.
4. In subrule 2.4(2), added "concerning settlement discussions" to the reference to ex parte communications for clarity.
5. In subrule 4.5(2), added that the Board "shall give preference to assigning an administrative law judge if requested by a party" and increased from one or more to two or more the number of reasons necessary for denial of the request.
6. In subrule 6.10(2), added the phrase "whose precise content is" to clarify the reference to rules mandated by either state or federal law.
7. In paragraph 6.12(1)"f," deleted contingencies for explaining a waiver or special exception provided in a rule so that the explanation is required.

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8. In rules 497—7.3(17A,22) and 497—7.4(17A,22), added the term “board” to describe what records may be accessed by the public for clarity.

9. In rule 497—7.5(17A,22), added “government body” to references about the rights and abilities of a “person” and clarified the catchwords of the rule.

10. Added a new subrule 7.5(1) relating to the confidential status of government records and renumbered Noticed subrules 7.5(1) to 7.5(5) as 7.5(2) to 7.5(6).

11. In renumbered subrule 7.5(2), changed “public record” to “open record” for clarity and accuracy and, in the first sentence of renumbered subrule 7.5(3), added the word “government” to modify the word “record” and added the word “board” to modify the word “custodian” for clarity.

12. In renumbered subrule 7.5(5), further clarified the process outlining when an individual may request a document from the Board.

13. Did not adopt proposed subrule 7.5(6), but instead adopted new subrule 7.5(7) herein regarding Board denial of a request for confidential record treatment.

14. In rule 497—7.6(17A,22), deleted the following sentence: “However, any additions, dissents or objections entered into the record shall not be considered evidence in a contested case proceeding.”

In addition, two technical changes have been made. The article “a” was added before the word “significant” in the definition of “conflict of interest” in subrule 1.4(1), and the article “the” was removed before the reference to Iowa Rule of Civil Procedure 1.977 in subrule 4.21(6).

After analysis and review of this rule making, no impact on jobs has been found.

These rules are intended to implement 2012 Iowa Acts, chapter 1115, section 3.

These rules will become effective July 1, 2013.

The following amendments are adopted.

ITEM 1. Adopt the following new 497—Chapter 1:

CHAPTER 1
ORGANIZATION AND GENERAL ADMINISTRATION

497—1.1(84GA,ch1115) Board description.

1.1(1) The Iowa public information board is established by 2012 Iowa Acts, chapter 1115, section 6, and consists of nine members, including a chairperson.

1.1(2) The term “board” shall mean the Iowa public information board.

1.1(3) Board members are appointed by the governor for staggered terms of four years and are subject to confirmation by the senate. No more than three members appointed shall be representatives from the media, including newspapers, and no more than three members appointed shall be representatives of cities, counties, and other political subdivisions of the state.

1.1(4) On an annual basis at the board’s first meeting on or after July 1, the members shall elect a chairperson. The board shall also employ a person who shall be an attorney admitted to practice law before the courts of Iowa to serve as the executive director of the board.

1.1(5) Vacancies on the board are filled in the same manner as regular appointments. Appointees who fill vacancies serve for the balance of the term.

1.1(6) The board shall meet at least quarterly and at the call of the chairperson.

1.1(7) Five board members constitute a quorum for conducting board business.

1.1(8) The board is available to assist in achieving compliance with open meetings and public records laws in alternative ways. Information is available on the board’s Web site at [Web address]. The members of governmental bodies and the public may call the board for informal answers to questions during office hours from 8 a.m. to 4:30 p.m. on Monday through Friday at [telephone number]. Written guidance about compliance with the open meetings and public records laws may be provided by advisory opinions (see rules 497—1.2(84GA,ch1115) and 497—1.3(84GA,ch1115)) or by declaratory orders (see rules 497—3.1(84GA,ch1115) to 497—3.8(84GA,ch1115)). In addition, complaints may be filed alleging violations of open meetings or public records laws under rule 497—2.1(84GA,ch1115).

This rule is intended to implement 2012 Iowa Acts, chapter 1115, section 6.

IOWA PUBLIC INFORMATION BOARD[497](cont'd)

497—1.2(84GA,ch1115) Requirements for requesting board advisory opinions.

1.2(1) *Jurisdiction.* The board will only issue advisory opinions pertaining to Iowa Code chapters 21 and 22, or rules adopted thereunder. The board shall not have jurisdiction over the judicial or legislative branches of state government or any entity, officer, or employee of those branches, or over the governor or the office of the governor.

1.2(2) *Who may request an advisory opinion.* Any person may request a board advisory opinion construing or applying Iowa Code chapters 21 and 22. The board may issue declaratory orders with the force of law pursuant to Iowa Code section 17A.9.

1.2(3) *Form of request.* The request for an advisory opinion shall pose specific legal questions and should describe any specific facts relating to the questions posed. Requests shall be sent to the board as provided in subrule 1.3(1).

This rule is intended to implement 2012 Iowa Acts, chapter 1115, section 9(3).

497—1.3(84GA,ch1115) Processing of advisory opinion requests.

1.3(1) Requests for board advisory opinions may be mailed to the Iowa Public Information Board, [address]. Requests may also be submitted by fax to [fax number] or by e-mail to [e-mail address].

1.3(2) After receiving an opinion request, the board's executive director shall prepare a draft opinion for board review. If the same or similar issue has been addressed in an opinion of a court, or in an attorney general's opinion, or in another prior advisory opinion, the executive director may respond to the requester by sending a copy of the prior opinion. Upon an affirmative vote of at least five members, the executive director shall issue a board advisory opinion on behalf of the board. The executive director may also cause an opinion to be issued on a routine matter on behalf of the board and shall provide notice to the board in writing of the opinion given. Advice contained in a board opinion rendered to a government official or a lawful custodian of a public record, if followed, constitutes a defense for the government official or lawful custodian before the board to a subsequent complaint that is based on the same facts and circumstances.

1.3(3) A person who receives a board advisory opinion may, within 30 days after the issuance of the opinion, request modification or reconsideration of the opinion. A request for modification or reconsideration shall be deemed denied unless the board acts upon the request within 60 days of receipt of the request. The board may take up modification or reconsideration of an advisory opinion on its own motion within 30 days after the issuance of an opinion. The board aspires to issue an opinion within 30 days after a formal request is made.

1.3(4) Board advisory opinions are open records and shall be made available at the board office and via the board's Web site at [Web address].

1.3(5) Nothing in this rule precludes a person who has received a board opinion or advice from petitioning for a declaratory order pursuant to Iowa Code section 17A.9. The board may refuse to issue a declaratory order to a person who has previously received a board opinion on the same question, unless the requester demonstrates a significant change in circumstances from those in the board opinion.

497—1.4(84GA,ch1115) Conflict of interest.

1.4(1) *Definition.* "Conflict of interest" means that a board member, the executive director, or a board member's immediate family has a significant personal, financial, or employment relationship with: a person who has requested an advisory opinion; a person who has petitioned for a declaratory order; a complainant; or a government employee or official or a governmental body that would be directly impacted by an advisory opinion, declaratory order, or a complaint. For purposes of this rule, "immediate family" means a member's spouse, child, grandchild, or parent.

1.4(2) *Procedures.* As soon as a member of the board or the executive director becomes aware of a conflict of interest, the member or executive director shall follow these procedures:

a. If the conflict is known before a meeting, the member or executive director shall fully disclose the interest to the chairperson of the board in writing at least 24 hours before the meeting.

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b. If the conflict is discovered during a meeting, the member or executive director shall orally inform the board and the nature of the conflict shall be reported in writing to the chairperson of the board within 24 hours after the meeting.

c. The board member or executive director who has the conflict shall not participate in discussion or vote on any advisory opinion, declaratory order, or complaint.

These rules are intended to implement 2012 Iowa Acts, chapter 1115, section 6.

ITEM 2. Adopt the following new 497—Chapter 2:

CHAPTER 2
COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURES

497—2.1(84GA,ch1115) Complaints.

2.1(1) *Form.* A complaint shall be written and signed by the person filing the complaint on forms provided by the board. The complaint shall allege a violation of Iowa Code chapter 21 or 22; provide specific facts in support of the allegation, including the identification of persons and government entity involved in the alleged violation; and provide the specific relief sought.

2.1(2) *Board acceptance or dismissal.* Upon receipt of a written complaint alleging a violation of Iowa Code chapter 21 or 22, the board shall either:

a. Accept the complaint, following a review of the allegations on their face, having determined that the complaint is within the board's jurisdiction, appears legally sufficient, and could have merit; or

b. Dismiss the complaint, following a review of the allegations on their face, having determined that the complaint is outside the board's jurisdiction, appears legally insufficient, is frivolous, is without merit, involves harmless error, or relates to a specific incident that has previously been disposed of on its merits by the board or a court.

2.1(3) *Delegation.* In order to expedite proceedings, the board may delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.

2.1(4) *Notice.* If the complaint is accepted, the board shall notify the parties in writing. If the complaint is dismissed, the board shall notify the complainant in writing and explain its reasons for dismissal.

2.1(5) *Board review.* The board's review of a formal complaint for legal sufficiency is not a contested case proceeding and shall be made solely on the facts alleged in the complaint.

497—2.2(84GA,ch1115) Investigations—board action.

2.2(1) *Referral to staff.* Upon acceptance of a complaint, the board shall work with the executive director toward an informal, expeditious resolution. If the complaint is not resolved, the staff shall initiate an investigation to determine whether there is probable cause to believe a violation of Iowa Code chapter 21 or 22 has occurred.

a. *Statements inadmissible and confidential.* Statements made in the course of discussions undertaken to attempt to reach an informal, expeditious resolution cannot be admitted in subsequent contested case proceedings and shall not be related by any participating board member or staff to nonparticipating board members who may later be assigned to hear and decide the contested case.

b. *Board member participation.* A board member who participates in discussions undertaken to attempt to reach an informal, expeditious resolution shall not participate in subsequent contested case proceedings or any appeal from a proposed decision to the full board.

2.2(2) *Subpoenas.* Investigations may include the issuance and enforcement of investigative subpoenas requiring the production of books, papers, records, electronic records and other real evidence, as well as requiring the attendance and testimony of witnesses.

2.2(3) *Completion.* Upon completion of an investigation, staff shall make a report to the board and may provide a recommendation for board action.

2.2(4) *Board action.* Upon receipt and review of the staff investigative report and any recommendations, the board may:

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- a. Redirect the matter for further investigation;
- b. Dismiss the matter for lack of probable cause to believe a violation has occurred;
- c. Make a determination that probable cause exists to believe a violation has occurred, but, as an exercise of administrative discretion, dismiss the matter; or
- d. Make a determination that probable cause exists to believe a violation has occurred, designate a prosecutor and direct the issuance of a statement of charges to initiate a contested case proceeding.

497—2.3(84GA,ch1115) Civil penalties and other appropriate remedies. If it is determined after a contested case proceeding that a violation of statute or rule under the board's jurisdiction has occurred, the board may impose any of the remedies set out in 2012 Iowa Acts, chapter 1115, section 9(8) or section 13(3b).

497—2.4(84GA,ch1115) Settlements. Settlements may be negotiated during an investigation or after the commencement of a contested case proceeding. Negotiations shall be conducted between the prosecutor and a governmental body or government official against whom a complaint has been filed.

2.4(1) Board member participation. The board may designate the chairperson or another board member to participate in settlement negotiations after initiation of a contested case.

2.4(2) Ex parte communications. If settlement negotiations are undertaken after a contested case has been initiated, the respondent may be required to waive any objections to ex parte communications concerning settlement discussions.

2.4(3) Approval. A settlement shall be in writing and is subject to approval of a majority of the board. If the board declines to approve a proposed settlement, the settlement shall be of no force or effect.

These rules are intended to implement 2012 Iowa Acts, chapter 1115.

ITEM 3. Adopt the following new 497—Chapter 3:

CHAPTER 3 DECLARATORY ORDERS

497—3.1(17A) Petition for declaratory order. Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board, at Iowa Public Information Board, [address]. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA PUBLIC INFORMATION BOARD

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER
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The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.

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6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.

8. Any request by petitioner for a meeting provided for by rule 497—3.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

497—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 497—3.6(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons.

497—3.3(17A) Intervention.

3.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

3.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

3.3(3) A petition for intervention shall be filed at Iowa Public Information Board, [address]. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA PUBLIC INFORMATION BOARD

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION
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The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

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497—3.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

497—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the board's executive director at Iowa Public Information Board, [address].

497—3.6(17A) Service and filing of petitions and other papers.

3.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

3.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Iowa Public Information Board, [address]. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

3.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 497—4.11(17A).

497—3.7(17A) Consideration. Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board, to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

497—3.8(17A) Action on petition.

3.8(1) Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the board's executive director or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

3.8(2) The date of issuance of an order or of a refusal to issue an order means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

497—3.9(17A) Refusal to issue order.

3.9(1) The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

- a. The petition does not substantially comply with the required form.
- b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
- c. The board does not have jurisdiction over the questions presented in the petition.
- d. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding that may definitively resolve them.
- e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
- g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
- h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.

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i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

3.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

3.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

497—3.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

497—3.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

497—3.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code section 17A.9.

ITEM 4. Adopt the following new 497—Chapter 4:

CHAPTER 4
CONTESTED CASES

497—4.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the board.

497—4.2(17A) Definitions. Except where otherwise specifically defined by law:

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“*Party*” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means the board, or one or more members of the board, or an administrative law judge assigned by the department of inspections and appeals.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the board did not preside.

497—4.3(17A) Time requirements.

4.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

4.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

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497—4.4(17A) Notice of hearing.

4.4(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

4.4(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as prosecutor for the board and of the parties' counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;
- h. Identification of the presiding officer, if known; and
- i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) "a," that the presiding officer be an administrative law judge.

497—4.5(17A) Presiding officer.

4.5(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within ten days after service of a notice of hearing which identifies or describes the presiding officer as the board or one or more members of the board.

4.5(2) The board shall give preference to assigning an administrative law judge if requested by a party and may deny the request only upon a finding that two or more of the following apply:

- a. Neither the board nor any member of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c. A qualified administrative law judge is unavailable to hear the case within a reasonable time.
- d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- f. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.
- g. The request was not timely filed.

4.5(3) The board shall issue a written ruling specifying the grounds for its decision within ten days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of a qualified administrative law judge, the parties shall be notified at least ten days prior to hearing if a qualified administrative law judge will not be available.

4.5(4) An administrative law judge assigned to act as presiding officer in contested cases involving open meetings or public records laws shall have knowledge of or experience with Iowa Code chapters 21 and 22 unless waived by the agency.

4.5(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

4.5(6) Unless otherwise provided by law, the board, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

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497—4.6(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

497—4.7(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

497—4.8(17A) Disqualification.

4.8(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.8(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3).

4.8(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.8(4) If a party asserts disqualification on any appropriate ground, the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding

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officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 497—4.24(17A) and seek a stay under rule 497—4.28(17A).

497—4.9(17A) Consolidation—severance.

4.9(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

4.9(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

497—4.10(17A) Pleadings.

4.10(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

4.10(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

4.10(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

4.10(4) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

497—4.11(17A) Service and filing of pleadings and other papers.

4.11(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

4.11(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

4.11(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board at [address]. All pleadings,

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motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the Iowa public information board.

4.11(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board office, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

4.11(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

497—4.12(17A) Discovery.

4.12(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.12(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.12(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.12(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

497—4.13(17A) Subpoenas.

4.13(1) Issuance.

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

4.13(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

497—4.14(17A) Motions.

4.14(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

4.14(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.14(3) The presiding officer may schedule oral argument on any motion.

4.14(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

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4.14(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of the Iowa Rules of Civil Procedure and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 30 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 497—4.27(17A) and appeal pursuant to rule 497—4.26(17A).

497—4.15(17A) Prehearing conference.

4.15(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the board to all parties. For good cause the presiding officer may permit variances from this rule.

4.15(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

4.15(3) In addition to the requirements of subrule 4.15(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

4.15(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

497—4.16(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

4.16(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The agency may waive notice of such requests for a particular case or an entire class of cases.

4.16(2) In determining whether to grant a continuance, the presiding officer may consider:

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- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

497—4.17(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with agency rules. Unless otherwise provided, a withdrawal shall be with prejudice.

497—4.18(17A) Intervention.

4.18(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within ten days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

4.18(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

4.18(3) Grounds for intervention. The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

4.18(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

497—4.19(17A) Hearing procedures.

4.19(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

4.19(2) All objections shall be timely made and stated on the record.

4.19(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

4.19(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

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4.19(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

4.19(6) Witnesses may be sequestered during the hearing.

4.19(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

497—4.20(17A) Evidence.

4.20(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

4.20(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.20(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

4.20(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

4.20(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

4.20(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

497—4.21(17A) Default.

4.21(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

4.21(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

4.21(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 497—4.26(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause

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existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

4.21(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

4.21(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

4.21(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

4.21(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 497—4.24(17A).

4.21(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

4.21(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

4.21(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 497—4.28(17A).

497—4.22(17A) Ex parte communication.

4.22(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 4.8(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

4.22(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

4.22(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

4.22(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 497—4.11(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

4.22(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

4.22(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not

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disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 4.22(1).

4.22(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 497—4.16(17A).

4.22(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order or disclosed. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

4.22(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

4.22(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the executive director or the individual designated by the executive director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

497—4.23(17A) Recording costs. Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

497—4.24(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

497—4.25(17A) Final decision.

4.25(1) When the board, or a quorum of the board, presides over the reception of evidence at the hearing, its decision is a final decision.

4.25(2) When the board, or a quorum of the board, does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the board within the time provided in rule 497—4.26(17A).

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497—4.26(17A) Appeals and review.

4.26(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

4.26(2) *Review.* The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

4.26(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought; and
- e. The grounds for relief.

4.26(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a non-appealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

4.26(5) *Scheduling.* The board shall issue a schedule for consideration of the appeal.

4.26(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

497—4.27(17A) Applications for rehearing.

4.27(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

4.27(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.26(4), the applicant requests an opportunity to submit additional evidence.

4.27(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

4.27(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

4.27(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

497—4.28(17A) Stays of agency actions.

4.28(1) *When available.*

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The board may rule on the stay or authorize the presiding officer to do so.

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b. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy. A party must petition the board for a stay before seeking a stay in district court.

4.28(2) *When granted.* In determining whether to grant a stay, the presiding officer or the board shall consider the factors listed in Iowa Code section 17A.19(5) “c.”

4.28(3) *Vacation.* A stay may be vacated by the issuing authority upon application of any party.

497—4.29(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

These rules are intended to implement Iowa Code section 17A.12 and 2012 Iowa Acts, chapter 1115, section 6.

ITEM 5. Adopt the following **new** 497—Chapter 5:

CHAPTER 5
PETITIONS FOR RULE MAKING

497—5.1(17A) Petition for rule making. Any person or agency may file a petition for rule making with the board at Iowa Public Information Board, [address]. A petition is deemed filed when it is received by the board. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA PUBLIC INFORMATION BOARD

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject of matter).	PETITION FOR RULE MAKING
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The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendments to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.

2. A citation to any law deemed relevant to the board’s authority to take the action urged or to the desirability of that action.

3. A brief summary of petitioner’s arguments in support of the action urged in the petition.

4. A brief summary of the data supporting the action urged in the petition.

5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in, the proposed action which is the subject of the petition.

6. Any request by petitioner for a meeting provided for by rule 497—5.4(17A).

5.1(1) The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s

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representative, and a statement indicating the person to whom communications concerning the petition should be directed.

5.1(2) The board may deny a petition because it does not substantially conform to the required form.

497—5.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

497—5.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the board at Iowa Public Information Board, [address].

497—5.4(17A) Board consideration.

5.4(1) Within 14 days after the filing of a petition, the board must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board, to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

5.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the board mails or delivers the required notification to petitioner.

5.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

These rules are intended to implement Iowa Code section 17A.7 and 2012 Iowa Acts, chapter 1115, section 6.

ITEM 6. Adopt the following new 497—Chapter 6:

CHAPTER 6
AGENCY PROCEDURE FOR RULE MAKING

497—6.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the board are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

497—6.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the board may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1) "a," solicit comments from the public on a subject matter of possible rule making by the board by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

497—6.3(17A) Public rule-making docket.

6.3(1) *Docket maintained.* The board shall maintain a current public rule-making docket.

6.3(2) *Anticipated rule making.* The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the board. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by

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the board for subsequent proposal under the provisions of Iowa Code section 17A.4(1) "a," the name and address of board personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the board of that possible rule. The board may also include in the docket other subjects upon which public comment is desired.

6.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1) "a," to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any board determinations with respect thereto;
- h. Any known timetable for board decisions or other action in the proceeding;
- i. The date of the rule's adoption;
- j. The date of the rule's filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

497—6.4(17A) Notice of proposed rule making.

6.4(1) Contents. At least 35 days before the adoption of a rule the board shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the board shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the board for the resolution of each of those issues.

6.4(2) Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 6.12(2) of this chapter.

6.4(3) Copies of notices. Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the board a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the board for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription

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service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one calendar year.

497—6.5(17A) Public participation.

6.5(1) *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to Iowa Public Information Board, [address], or the person designated in the Notice of Intended Action.

6.5(2) *Oral proceedings.* The board may, at any time, schedule an oral proceeding on a proposed rule. The board shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the board by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

a. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

b. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

c. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

6.5(3) *Conduct of oral proceedings.*

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1) “b” or this chapter.

b. Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. The board, a member of the board, or another person designated by the board who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the board does not preside, the presiding officer shall prepare a memorandum for consideration by the board summarizing the contents of the presentations made at the oral proceeding unless the board determines that such a memorandum is unnecessary because the board will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the board at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the board decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

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(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the board.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

6.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the board may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

6.5(5) *Accessibility.* The board shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the board's executive director at [telephone number] in advance to arrange access or other needed services.

497—6.6(17A) Regulatory analysis.

6.6(1) *Definition of small business.* A "small business" is defined in Iowa Code section 17A.4A(8).

6.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the board's small business impact list by making a written application addressed to Iowa Public Information Board, [address]. The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. Its address;
- c. The name of a person authorized to transact business for the applicant;
- d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact; and
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The board may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The board may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

6.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(3), the board shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

6.6(4) *Qualified requesters for regulatory analysis—economic impact.* The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2)"a" after a proper request from:

- a. The administrative rules coordinator; or
- b. The administrative rules review committee.

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6.6(5) *Qualified requesters for regulatory analysis—business impact.* The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) “b” after a proper request from:

- a. The administrative rules review committee;
- b. The administrative rules coordinator;
- c. At least 25 or more persons who sign the request provided that each represents a different small business;
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

6.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the board shall adhere to the time lines described in Iowa Code section 17A.4A(4).

6.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the board. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A.

6.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A.

6.6(9) *Publication of a concise summary.* The board shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A.

6.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) “a” unless a written request expressly waives one or more of the items listed in the section.

6.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) “b.”

497—6.7(17A) Fiscal impact statement.

6.7(1) A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

6.7(2) If the board determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the board shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

497—6.8(17A) Time and manner of rule adoption.

6.8(1) *Time of adoption.* The board shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the board shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

6.8(2) *Consideration of public comment.* Before the adoption of a rule, the board shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

6.8(3) *Reliance on board expertise.* Except as otherwise provided by law, the board may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

497—6.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

6.9(1) The board shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a.* The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b.* The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
- c.* The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

6.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the board shall consider the following factors:

- a.* The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b.* The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c.* The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

6.9(3) The board shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the board finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

6.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the board to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

497—6.10(17A) Exemptions from public rule-making procedures.

6.10(1) *Omission of notice and comment.* To the extent the board for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the board may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

6.10(2) *Categories exempt.* The following narrowly tailored category of rules is exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class: rules whose precise content is mandated by either state or federal law.

6.10(3) *Public proceedings on rules adopted without them.* The board may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 6.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the board shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 6.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the board may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 6.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

497—6.11(17A) Concise statement of reasons.

6.11(1) General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the board shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to Iowa Public Information Board, [address]. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

6.11(2) Contents. The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the board's reasons for overruling the arguments made against the rule.

6.11(3) Time of issuance. After a proper request, the board shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

497—6.12(17A) Contents, style, and form of rule.

6.12(1) Contents. Each rule adopted by the board shall contain the text of the rule and, in addition:

- a. The date the board adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(2) or the board in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided; and
- g. The effective date of the rule.

6.12(2) Incorporation by reference. The board may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the board finds that the incorporation of its text in the board proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the board proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The board may incorporate such matter by reference in a proposed or adopted rule only if the board makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this board, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons originally issuing that matter. The board shall retain permanently a copy of any materials incorporated by reference in a rule of the board.

If the board adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative code editor for deposit in the state law library and may make the standards available electronically.

6.12(3) References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the board shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted

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rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the board. The board will provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the board shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

6.12(4) *Style and form.* In preparing its rules, the board shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

497—6.13(17A) Agency rule-making record.

6.13(1) *Requirement.* The board shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

6.13(2) *Contents.* The board rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of board submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the board's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the board, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the board and considered by the board, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the board is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the board shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendment or repeal or suspension of the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(3) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any board response to that objection;

j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

k. A copy of any executive order concerning the rule.

6.13(3) *Effect of record.* Except as otherwise required by a provision of law, the board rule-making record required by this rule need not constitute the exclusive basis for board action on that rule.

6.13(4) *Maintenance of record.* The board shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 6.13(2) "g," "h," "i," or "j."

497—6.14(17A) Filing of rules. The board shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the

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time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the board shall use the standard form prescribed by the administrative rules coordinator.

497—6.15(17A) Effectiveness of rules prior to publication.

6.15(1) *Grounds.* The board may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

6.15(2) *Special notice.* When the board makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b”(3), the board shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the board to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the board of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 6.15(2).

497—6.16(17A) General statements of policy.

6.16(1) *Compilation, indexing, public inspection.* The board shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(11) “a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(11) “f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

6.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the board to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 6.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

497—6.17(17A) Review by agency of rules.

6.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the board to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the board shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The board may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

6.17(2) In conducting the formal review, the board shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the board’s findings regarding the rule’s effectiveness in achieving

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its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the board or granted by the board. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the board's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code section 17A.4.

ITEM 7. Adopt the following new 497—Chapter 7:

CHAPTER 7
FAIR INFORMATION PRACTICES

The Iowa public information board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to fair information practices which are published on the Iowa general assembly's Web site at <https://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf>.

497—7.1(17A,22) Definitions. As used in this chapter:

“Agency” means the Iowa public information board.

“Confidential records” means records, as defined under Iowa Code section 22.7 or any other provision of law, which are not disclosed to members of the public unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release the records. This includes records which the board is prohibited by law from making available for inspection by members of the public and those exempt records which the board has lawfully determined not to disclose to members of the public.

“Open records” means those records which are not authorized or required to be kept confidential under Iowa Code section 22.7 or any other provision of law.

“Record” means the whole or a part of a “public record” as defined in Iowa Code section 22.1 that is owned by or is in the physical possession of the board.

“Record system” means any group of records under the control of the board from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

497—7.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound board determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The board is committed to the policies set forth in Iowa Code chapter 22, and board staff shall cooperate with members of the public in implementing the provisions of that chapter.

497—7.3(17A,22) Requests for access to board records.

7.3(1) Location of record. A request for access to a board record shall be directed to the Iowa Public Information Board, [address]. If the requested record is not on file in the board office, the custodian will arrange for it to be retrieved from state archives and made available in the board office.

7.3(2) Office hours. Records of the board shall be made available during customary office hours of 8 a.m. to 4:30 p.m. on Monday through Friday, excluding Saturdays, Sundays, and legal holidays. Records made available via the board's Web site at [Web address] are available at all hours and on all days.

7.3(3) Request for access. Requests for access to board records may be made in writing, in person, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail requests shall include the name, address, and telephone number

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of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

7.3(4) *Granting access to records.* The custodian is authorized to grant or deny access to the board's record according to the provisions of Iowa Code chapter 22, this chapter or any other provision of law. The decision to grant or deny access may be delegated to one or more designated employees. Access to an open record shall be granted immediately upon request. If the size or nature of the request requires time for compliance, the board shall comply with the request as soon as possible. However, access to such a record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4). The board shall promptly inform the requester of the reason for the delay.

7.3(5) *Security of record.* No person shall, without permission, search or remove any record from board files. Examination and copying of records shall be done under the supervision of board staff. Records shall be protected from damage and disorganization.

7.3(6) *Copying.* A reasonable number of copies may be made in the board office unless printed copies are available. If copying equipment is not available in the office where a record is kept, the board shall permit its examination in that office and shall arrange to have copies promptly made elsewhere. Records made available on the board's Web site may be copied without restriction.

7.3(7) *Fees.*

a. Copying costs. Price schedules for regularly published records and for copies of records not regularly published shall be posted by the board. Copies may be made by or for members of the public at cost as determined and posted by the custodian of the record. The cost of postage and of other services provided in connection with the request may be charged as appropriate.

b. Search and supervisory fee. An hourly fee may be charged for actual board expenses in searching for, and supervising the examination and copying of, requested records. The fee shall be based upon the pay scale of the employee involved and other actual costs incurred. No fee shall be charged if the records are not made available for inspection, or if the time required does not exceed three hours in duration, or if the time required for the search was the result of a board error or a record-keeping problem. The board shall post the hourly fees to be charged in routine cases for search and supervision of records. The board shall give advance notice to the requester if it will be necessary to use an employee with a higher hourly wage in order to find or supervise the particular records in question, and shall indicate the amount of that higher hourly wage to the requester.

c. Advance deposits.

(1) The board may require a requester to make an advance deposit of the estimated fee.

(2) When a requester has previously failed to pay a fee charged under this subrule, the board may require advance payment of the full amount of any estimated fee before the board processes a new or pending request for access to records from that requester, as well as payment in full of the amount previously owed.

497—7.4(17A,22) Procedures for access to confidential records. The following procedures for access to confidential records are in addition to those specified for all board records in rule 497—7.3(17A,22).

7.4(1) *Proof of identity.* A person requesting access to a confidential record shall be required to provide proof of identity if access to the record is restricted to a particular person or class of persons.

7.4(2) *Requests.* A request to review a confidential board record shall be in writing. A person requesting access to a confidential board record may be required to sign a certified statement or affidavit enumerating the specific grounds justifying access to the confidential record and to provide any proof necessary to establish relevant facts. Such request may be referred to the full board for consideration.

7.4(3) *Request denied.* When the custodian of a confidential board record or the board denies a request for access to a confidential record, in whole or in part, the requester shall be notified in writing. The denial shall be signed by the custodian of the confidential record and shall include:

a. The name and title or position of the person or persons responsible for the denial and a brief citation to the statute or other provision of law that prohibits disclosure of the record;

b. A brief citation to the statute vesting discretion in the custodian to deny disclosure of the record; and

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- c. A brief statement of the grounds for the denial to this requester.

497—7.5(17A,22) Requests for treatment of a government record as a confidential record and its withholding from examination by the board.

7.5(1) Board to maintain confidential status of government records. If, pursuant to the board's investigation of a complaint, the record of a government body comes into the board's possession, either pursuant to the government body's voluntary response to the board's request or in response to a board subpoena, and if the government body makes a claim that all or part of the record constitutes a confidential record under Iowa Code section 22.7 or other provision of law, the board shall maintain the confidential status of the record or part of the record until the claim is adjudicated as hereafter provided. If a person provides the board with a government record without the apparent authority of the lawful custodian, the board shall confirm the authenticity of the record with the government body and shall inquire of the government body if it makes claim that all or part of the record constitutes a confidential record under Iowa Code section 22.7 or other provision of law. If the government body makes claim that all or part of the record constitutes a confidential record, the board shall maintain the confidential status of the record or part of the record until the claim is adjudicated as hereafter provided.

7.5(2) Who may file request. Any person, including a government body, who would be aggrieved or adversely affected by disclosure of all or a part of a record to members of the public may file a request, as provided in this rule, for the record's treatment as a confidential record. Failure of a person to request confidential record treatment for all or part of a record, such as information obtained in the course of a board investigation or to achieve voluntary compliance with 2012 Iowa Acts, chapter 1115, does not preclude the board from treating the record as a confidential record. The information may become an open record once the matter is resolved or dismissed.

7.5(3) Form of request. A request for the treatment of a government record as a confidential record shall be in writing and shall be filed with the board custodian of the record. The request shall include the specific grounds justifying confidential record treatment for all or part of the record; the specific provision of law that authorizes such confidential record treatment; and the name, address, and telephone number of the person authorized to respond to any board action concerning the request. A person, including a government body, filing such a request shall attach a copy of the record in question. The material to which the request applies shall be physically separated from any materials to which the request does not apply. The request shall be attached to the materials to which it applies. Each page of the material to which the request applies shall be clearly marked confidential. If the original record is being submitted to the board by the person requesting confidentiality at the same time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are a confidential record. A request for treatment of all or portions of a record as a confidential record for a limited time period shall also specify the precise period of time for which such confidential record treatment is requested.

7.5(4) Failure to request confidentiality. If a person, including a government body, who has submitted business information to the board does not request confidential record treatment for all or part of that information, the board custodian of records containing that information may assume that the person who submitted the information has no objection to its disclosure.

7.5(5) Time. A board decision with respect to the confidentiality of all or parts of a record may be made when a request for the record's treatment as a confidential record is filed or when the board receives a request for access to the record, or when a complaint alleging a violation of Iowa Code chapter 22 is resolved by the board.

7.5(6) Effect of granted request. If a request for confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the board decision will be placed in the public file in lieu of the original record.

7.5(7) Board denial of request for confidential record treatment. If the board determines that the record of a government body which is claimed to be confidential in whole or in part is not entitled to confidential treatment under Iowa Code chapter 22 or under other applicable provisions of law or applicable precedent, the board may enter its decision denying the request for confidential record treatment. If the record is the subject of a pending complaint, the board may withhold an order

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addressing confidentiality until the complaint is resolved. Upon resolution of the complaint, the board may enter an order concluding the record is confidential, or directing the government body to release the record, or any part thereof which the board determines not to be entitled to confidential record treatment.

497—7.6(17A,22) Procedure by which additions, dissents or objections may be entered into certain records. Except as otherwise provided by law, the subject shall have the right to have a written statement of additions, dissents or objections entered into the record. The subject shall send the statement to the Executive Director, Iowa Public Information Board, [address]. The statement shall be dated and signed by the subject and shall include the subject's current address and telephone number.

497—7.7(17A,22) Consensual disclosure of confidential records.

7.7(1) Consent to disclose by a subject individual. To the extent allowed by law, the subject may consent in writing to agency disclosure of confidential records.

7.7(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

7.7(3) Obtaining information from a third party. The board is required to obtain information to assist in making decisions regarding classification, programming, security and administrative management. Requests to third parties for this information may involve the release of confidential information about individuals. Except as provided by law, the board may make these requests only when the individual has authorized the release.

497—7.8(17A,22) Routine use. To the extent allowed by law, the following uses are considered routine uses of all agency records:

7.8(1) Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

7.8(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

7.8(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

7.8(4) Transfers of information within the agency, to other state agencies, or to units of local government as appropriate to administer the program for which the information is collected.

7.8(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

7.8(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

497—7.9(17A,22) Disclosures without the consent of the subject.

7.9(1) Open records are routinely disclosed without the consent of the subject.

7.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances when disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as permitted by law and in the particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is

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authorized by law, and if the head of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

- d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.
- e.* To the legislative services agency under Iowa Code section 2A.3.
- f.* Disclosures in the course of employee disciplinary proceedings.
- g.* In response to a court order or subpoena.

497—7.10(17A,22) Release to subject.

7.10(1) The subject of a confidential record may file a written request to review confidential records about that person. However, the board need not release the following records to the subject:

- a.* The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18).
- b.* Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.
- c.* Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code.
- d.* As otherwise authorized by law.

7.10(2) When a record has multiple subjects with interest in the confidentiality of the record, the board may take reasonable steps to protect confidential information relating to another subject.

497—7.11(17A,22) Availability of records.

7.11(1) *Open records.* Board records are open for public inspection and copying unless otherwise prohibited by current rule or law.

7.11(2) *Confidential records.* The following records may be kept confidential. Records are listed by category, according to the legal basis for withholding them from public inspection.

- a.* Records obtained under subpoena or through a board investigation that are confidential under Iowa Code section 22.7 or any another provision of law;
- b.* Minutes of closed meetings of a governmental body (Iowa Code section 21.5(4));
- c.* Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d";
- d.* Those portions of agency staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerance or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:
 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the agency;
- e.* Records which constitute attorney work product, or attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa Rule of Civil Procedure 1.503(3), Federal Rule of Civil Procedure 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility and case law; or
- f.* Other records made confidential by law.

497—7.12(17A,22) Personally identifiable information.

7.12(1) This rule describes the nature and extent of personally identifiable information which is collected, maintained and retrieved by the agency by personal identifier in record systems as defined in this rule. For each record system, this rule:

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a. Describes the legal authority for the collection of that information and the means of storage of that information; and

b. Indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

7.12(2) Complaint files. These records are the complaints filed with the board alleging a violation of Iowa Code chapter 21 or 22. The complaint will include a description of the facts on which the complaint is based and the name of the person filing the complaint.

7.12(3) Records of telephone inquiries. Records of the telephone inquiries may be kept for statistical reasons or to inform the board of the nature and volume of informal, verbal advice.

7.12(4) Litigation files. These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

7.12(5) Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, and tax withholding information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

497—7.13(17A,22) Other groups of records available for public inspection—policies and procedures (excluding security), meeting minutes. This rule describes groups of records maintained by the board other than record systems as previously defined. These records are routinely available to the public. However, the board's file of these records may contain confidential information, as discussed in rule 497—7.12(17A,22). The following records are stored both as hard copy and in automated data processing systems unless otherwise noted.

7.13(1) *Rule-making records.* Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4.

7.13(2) *Board meeting records.* Agendas, minutes and materials presented to the board are available from the office of the executive director, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. Board meeting records contain information about people who participate in meetings. The information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier.

7.13(3) *Publications.* News releases, annual reports, project reports, board newsletters, and related documents are available from the board office. Board news releases, project reports, and newsletters may contain information about individuals, including board staff or members of the board. This information is not retrieved by individual identifier.

7.13(4) *Statistical reports.* Periodic reports of the board for various board programs are available from the board office. Statistical reports do not contain personally identifiable information.

7.13(5) *Published materials.* The board uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law. These records are hard copy only.

7.13(6) *Policy manuals.* The board employees' manual, containing procedures describing the board's regulations and practices, is available. Subscriptions to all or part of the employees' manual

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are available at the cost of production and handling. Requests for subscription information should be addressed to the board office. Policy manuals do not contain information about individuals.

7.13(7) Other records. All other records that are not exempt from disclosure by law are available from the board office.

497—7.14(17A,22) Applicability. This chapter does not:

7.14(1) Require the agency to index or retrieve records which contain information about an individual by that person's name or other personal identifier.

7.14(2) Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

7.14(3) Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the regulations of another agency.

7.14(4) Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, rules of discovery, evidentiary privileges and applicable regulations of the agency.

These rules are intended to implement Iowa Code chapters 17A and 22.

[Filed 4/25/13, effective 7/1/13]

[Published 5/15/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/15/13.

ARC 0739C

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 89.14, the Boiler and Pressure Vessel Board hereby amends Chapter 90, "Administration of the Boiler and Pressure Vessel Program," Iowa Administrative Code.

The amendment defines the statutory phrase "institution of health and custodial care." This definition codifies existing practice.

The purposes of this amendment are to set forth existing practice in the rules and implement legislative intent.

Notice of Intended Action was published in the March 20, 2013, Iowa Administrative Bulletin as **ARC 0647C**. No public comment was received on the proposed amendment. This amendment is identical to the amendment published under Notice of Intended Action.

After analysis and review of this rule making, no impact on jobs will occur.

This amendment is intended to implement Iowa Code chapter 89.

This amendment shall become effective on June 19, 2013.

The following amendment is adopted.

Adopt the following **new** definition of "Institution of health and custodial care" in rule **875—90.2(89,261,252J,272D)**:

"Institution of health and custodial care" means any of the following:

1. A health care facility as defined by Iowa Code section 135C.1;
2. An assisted living program as defined by Iowa Code section 231C.2;
3. A boarding home as defined by Iowa Code section 135O.1;
4. A hospice that offers inpatient services in an institutional setting;
5. Any institution or facility in which persons are housed to receive medical, health, or other care or treatment; or

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6. Any other institution or facility in which persons are housed to receive assistance with meeting personal needs or activities of daily living.

A facility or office that provides care and services only on an outpatient basis shall not be an "institution of health and custodial care."

[Filed 4/25/13, effective 6/19/13]

[Published 5/15/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/15/13.

ARC 0734C

RACING AND GAMING COMMISSION[491]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby amends Chapter 1, "Organization and Operation," Chapter 2, "Rule Making and Declaratory Orders," Chapter 3, "Fair Information Practices," Chapter 4, "Contested Cases and Other Procedures," and Chapter 5, "Track and Excursion Boat Licensees' Responsibilities"; to rescind Chapter 8, "Wagering and Simulcasting," and to adopt new Chapter 8, "Wagering, Simulcasting and Advance Deposit Wagering"; to rescind Chapter 9, "Harness Racing"; and to amend Chapter 10, "Thoroughbred and Quarter Horse Racing," and Chapter 11, "Gambling Games," Iowa Administrative Code.

Items 1 to 9 and 11 change the Commission's address.

Item 10 clarifies that "abuse of discretion" is the standard of review for appeals of certain stewards' decisions and clarifies the ways in which the Commission will accept written appeals.

Item 12 establishes a shelf application for licensee debt.

Item 13 rescinds Chapter 8 and adopts new rules to treat pari-mutuel wagers and calculations similar to casino gambling games. New Chapter 8 also requires pari-mutuel wagers and calculations to be made available to the public upon request at a designated location.

Item 14 rescinds and reserves Chapter 9.

Items 15 and 16 remove "clerk of the course" as a racing official.

Items 17 and 18 clarify that "abuse of discretion" is the standard of review for appeals of stewards' disqualification decisions.

Item 19 establishes the requirement for trainers to ensure that their employees are properly licensed by the Commission.

Item 20 clarifies that gambling games of chance approved under Chapter 11 are to be conducted on the gaming floor.

Item 21 was removed from consideration.

These amendments were published under Notice of Intended Action in the February 20, 2013, Iowa Administrative Bulletin as **ARC 0604C**. A public hearing was held on March 12, 2013. Two changes have been made since the Notice of Intended Action. The following sentence was added to Item 10 due to comments received in order to clarify the methods the Commission accepts for written appeals: "An appeal may also be filed by facsimile, electronic mail, or any other method as determined by the administrator." Item 21 amending subrule 11.12(8), "wide area progressive systems," was not adopted as a result of comments from the gaming industry.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

These amendments will become effective June 19, 2013.

The following amendments are adopted.

ITEM 1. Amend paragraph **1.2(1)"a"** as follows:

a. The racing and gaming commission is located at ~~717 E. Court, Suite B~~ 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309; telephone (515)281-7352. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday.

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ITEM 2. Amend subrule 2.5(1) as follows:

2.5(1) *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Racing and Gaming Commission, ~~717 East Court, Suite B~~ 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309.

ITEM 3. Amend subrule 2.11(1) as follows:

2.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the commission shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Racing and Gaming Commission, ~~717 East Court, Suite B~~ 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

ITEM 4. Amend rule 491—2.18(17A) as follows:

491—2.18(17A) *Petition for rule making.* Any interested person or agency may file a petition for rule making with the commission. The petition for rule making shall be filed in the Racing and Gaming Commission Office, ~~717 East Court, Suite B~~ 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309. The petition shall either be mailed certified, return receipt requested, or may be delivered in person. An additional copy may be provided if the petitioner wishes to retain a file-stamped copy of the petition. The petition may be either typewritten or legibly printed in ink and must substantially conform to the following form:

RACING AND GAMING COMMISSION
~~717 East Court, Suite B~~ 1300 Des Moines Street, Suite 100
Des Moines, Iowa 50309

Petition by (Name of Petitioner)
for the (adoption, amendment,
or repeal) of rules relating to
(state subject matter).

}

PETITION FOR
RULE MAKING

The petition must provide the following information:

1. to 5. No change.

Petitioner's signature

2.18(1) to 2.18(4) No change.

ITEM 5. Amend rule 491—2.20(17A) as follows:

491—2.20(17A) *Petition for declaratory order.* Any person may file a petition with the commission for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the commission, at ~~717 East Court, Suite B~~ 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309. A petition is deemed filed when it is received by that office. The commission shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the commission an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

RACING AND GAMING COMMISSION
~~717 East Court, Suite B~~ 1300 Des Moines Street, Suite 100
Des Moines, Iowa 50309

Petition by (Name of Petitioner)
for a Declaratory Order on
(Cite provisions of law involved).

}

PETITION FOR
DECLARATORY ORDER

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The petition must provide the following information:

1. to 8. No change.

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

ITEM 6. Amend subrule 2.22(3) as follows:

2.22(3) A petition for intervention shall be filed at the Racing and Gaming Commission Office, ~~717 East Court, Suite B~~ 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309. Such a petition is deemed filed when it is received by that office. The commission will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

RACING AND GAMING COMMISSION
~~717 East Court, Suite B~~ 1300 Des Moines Street, Suite 100
Des Moines, Iowa 50309

Petition by (Name of Original Petitioner)
for a Declaratory Order on (Cite
provisions of law cited in original petition).



PETITION FOR
INTERVENTION

The petition for intervention must provide the following information:

1. to 7. No change.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

ITEM 7. Amend rule 491—2.24(17A) as follows:

491—2.24(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Administrator, Racing and Gaming Commission, ~~717 East Court, Suite B~~ 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309.

ITEM 8. Amend subrule 2.25(2) as follows:

2.25(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Racing and Gaming Commission Office, ~~717 East Court, Suite B~~ 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the commission.

ITEM 9. Amend subrule 3.3(1) as follows:

3.3(1) Location of record. In lieu of the words “(insert agency head)”, insert “Administrator”. In lieu of the words “(insert agency name and address)”, insert “Racing and Gaming Commission, ~~717 East Court, Suite B~~ 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309”.

ITEM 10. Amend rule 491—4.10(99D,99F) as follows:

491—4.10(99D,99F) Appeals of administrative actions. A license applicant or an occupational licensee may appeal a denial, suspension or ruling. An appeal must be made in writing to the office of the gaming representative or the commission office in Des Moines. An appeal may also be filed by facsimile, electronic mail, or any other method as determined by the administrator. The appeal must be received within 72 hours of service of the decision and is not considered filed until received by the commission. For any appeal of a decision rendered pursuant to 491—paragraph 10.4(4) “d”(3) “1,”

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the appeal must be received within 72 hours of any such decision and the standard of review will be abuse of discretion. The appeal must contain numbered paragraphs and set forth the name of the person seeking review; the decision to be reviewed; separate assignments of error; clear and concise statement of relevant facts; reference to applicable statutes, rules or other authority; prayer setting forth relief sought; and signature, name, address, and telephone number of the person seeking review or that person's representative; or shall be on a form prescribed by the commission. If a licensee is granted a stay of a suspension pursuant to 491—4.45(17A) and the ruling is upheld in a contested case proceeding, the board of stewards may reassign the dates of suspension so that the suspension dates are served in the state of Iowa.

ITEM 11. Amend subrules 4.28(3) and 4.28(4) as follows:

4.28(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the commission at ~~717 East Court, Suite B~~ 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the commission.

4.28(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the commission office at ~~717 East Court, Suite B~~ 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

ITEM 12. Adopt the following **new** subrule 5.4(20):

5.4(20) Shelf application for debt.

- a. The commission may grant approval of a shelf application for a period not to exceed three years.
- b. Licensees whose parent company has issued publicly traded debt or publicly traded securities may apply to the commission for a shelf approval of debt transactions if the parent company has:
 - (1) A class of securities listed on the New York Stock Exchange, the American Stock Exchange or the National Association of Securities Dealers Automatic Quotation System (NASDAQ) or has stockholders' equity in the amount of \$15 million or more as reported in the parent company's most recent report on Form 10-K or Form 10-Q filed with the Securities and Exchange Commission (SEC) immediately preceding application; and
 - (2) Filed all reports required by the SEC.
- c. The application shall be in writing and shall contain:
 - (1) Proof of qualification to make the application in accordance with the criteria of this subrule.
 - (2) A statement of the amount of debt sought to be approved and the intended use of potential proceeds.
 - (3) Duration sought for the shelf approval.
 - (4) Financing rate sought during shelf approval.
 - (5) Evidence of signature by authorized representative of the licensee under oath.
 - (6) Other supplemental documentation requested by the commission or commission representative following the initial submission.
- d. Once an application is approved by the commission:
 - (1) The licensee shall notify the commission representative of all debt transactions within ten days of consummation, including subsequent amendments and modifications of debt transactions, and provide executed copies of the documents evidencing the transactions as may be required.
 - (2) The commission representative may rescind a shelf approval without prior written notice. The rescission shall be in writing and set forth the reasons for the rescission and shall remain in effect until lifted by the commission upon the satisfaction of any such terms and conditions as required by the commission.

RACING AND GAMING COMMISSION[491](cont'd)

ITEM 13. Rescind 491—Chapter 8 and adopt the following new chapter in lieu thereof:

CHAPTER 8
WAGERING, SIMULCASTING AND ADVANCE DEPOSIT WAGERING

491—8.1(99D) Definitions.

“Account” means an account approved by the commission for advance deposit wagering with a complete record of credits, wagers and debits established by a licensee account holder and managed by a licensee or ADWO.

“Administrator” means the administrator of the Iowa racing and gaming commission or the administrator’s designee.

“Advance deposit wagering” means a method of pari-mutuel wagering in which an individual may establish an account, deposit money into the account, and use the account balance to pay for pari-mutuel wagering.

“Advance deposit wagering center” means an actual location, the equipment, and the staff of a licensee, ADWO, or both involved in the management, servicing and operation of advance deposit wagering for the licensee.

“Advance deposit wagering operator” or *“ADWO”* means an advance deposit wagering operator licensed by the commission who has entered into an agreement with the licensee of the horse racetrack in Polk County and the Iowa Horsemen’s Benevolent and Protective Association to provide advance deposit wagering.

“Authorized receiver” means a receiver that conducts and operates a pari-mutuel wagering system on the results of contests being held or conducted and simulcast from the enclosures of one or more host facilities.

“Betting interest” means a number assigned to a single runner, an entry or a field for wagering purposes.

“Board of stewards” means a board established by the administrator to review conduct by pari-mutuel facilities and their employees that may constitute violations of the rules and statutes relating to pari-mutuel racing. The administrator may serve as a board of one.

“Breakage” means the odd cents by which the amount payable on each dollar wagered in a pari-mutuel pool exceeds a multiple of ten cents. “Breakage” is the net pool minus payoff.

“Commission” means the Iowa racing and gaming commission.

“Commission representative” means an employee of the commission designated to represent the commission in matters pertaining to the operation of the mutuel department. In the absence of a specifically appointed representative, a commission steward will perform the functions and duties of the commission representative.

“Contest” means a race on which wagers are placed.

“Credits” means all positive inflows of money to an account.

“Dead heat” means that two or more runners have tied at the finish line for the same position in the order of finish.

“Debits” means all negative outflow of money from an account.

“Deposit” means a payment of money into an account.

“Double” means a wager to select the winners of two consecutive races and is not a parlay and has no connection with or relation to any other pool conducted by the facility and shall not be construed as a “quinella double.”

“Entry” means two or more runners are coupled in a contest because of common ties and a wager on one of them shall be a wager on all of them.

“Exacta” (may also be known as “perfecta” or “correcta”) means a wager selecting the exact order of finish for first and second in that contest and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

“Facility” means an entity licensed by the commission to conduct pari-mutuel wagering in Iowa.

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“Field” means when the individual runners competing in a contest exceed the numbering capacity of the totalizator and all runners of the higher number shall be grouped together. A wager on one in the field shall be a wager on all. (No “fields” shall be allowed in greyhound racing.)

“Guest facility” means a facility which offers licensed pari-mutuel wagering on contests conducted by another facility (the host) in either the same state or another jurisdiction.

“Host facility” means the facility conducting a licensed pari-mutuel meeting from which authorized contests or entire performances are simulcast.

“Interstate simulcasting” means the telecast of live audio and visual signals of pari-mutuel racing sent to or received from a state outside the state of Iowa to an authorized racing or gaming facility for the purpose of wagering.

“Intrastate simulcasting” means the telecast of live audio and visual signals of pari-mutuel racing conducted on a licensed pari-mutuel track within Iowa sent to or received from an authorized pari-mutuel facility within Iowa for the purpose of pari-mutuel wagering.

“Licensee” means a horse racetrack located in Polk County operating under a license issued by the commission.

“Licensee account holder” means any individual at least 21 years of age who successfully completed an application and for whom the licensee or ADWO has opened an account. “Licensee account holder” does not include any corporation, partnership, limited liability company, trust, estate or other formal or nonformal entity.

“Minus pool” means when the total amount of money to be returned to the public exceeds what is in the pool because of the deduction of a commission and because of the rule stipulation that no mutuel tickets shall be paid at less than \$1.10 for each \$1.00 wagered.

“Mutuel department” means that area of a racetrack where wagers are made and winning tickets are cashed and where the totalizator is installed and any area used directly in the operation of pari-mutuel wagering.

“Mutuel manager” means an employee of the facility who manages the mutuel department.

“Net pool” means the amount remaining in each separate pari-mutuel pool after the takeout percentage, as provided for by Iowa Code section 99D.11, has been deducted.

“Odds” means the approximate payoffs per dollar based on win pool wagering only on each betting interest for finishing first without a dead heat with another betting interest.

“Official” means that the order of finish for the race is “official” and that payoff prices based upon the “official” order of finish shall be posted.

“Order of finish” means the finishing order of each runner from first place to last place in each race. For horse racing only, the order of finish may be changed by the stewards for a rule infraction prior to posting of the official order of finish.

“Pari-mutuel pool” means the total amount of money wagered on each separate pari-mutuel pool for payoff purposes.

“Payoff” means the amount distributed to holders of valid winning pari-mutuel tickets in each pool as determined by the official order of finish and includes the amount wagered and profit.

“Pick (n)” means a betting transaction in which a purchaser selects winner(s) of (x) number of contests designated by the facility during one racing card.

“Pick three” means a wager to select the winners of three consecutive races and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

“Place” means a runner finishing second.

“Place pick (n) pools” means a wager to select the first- or second-place finisher in each of a designated number of contests.

“Place pool” means the total amount of money wagered on all betting interests in each race to finish first or second.

“Post time” means the scheduled starting time for a contest.

“Proper identification” means a form of identification accepted in the normal course of business to establish that the person making a transaction is a licensee account holder.

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“Quinella” means a wager selecting two runners to finish first and second, regardless of the order of finish, and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

“Quinella double” means a wager which consists of selecting the quinella in each of two designated contests and is an entirely separate pool from all other pools and has no connection with or relation to any other pool conducted by the facility.

“Runner” means each entrant in a contest, designated by a number as a betting interest.

“Sales transaction data” means the data between totalizator ticket-issuing machines and the totalizator central processing unit for the purpose of accepting wagers and generating, canceling and cashing pari-mutuel tickets and the financial information resulting from the processing of sales transaction data, such as handle.

“Secure personal identification code” means an alpha-numeric character code provided by a licensee account holder as a means by which the licensee or ADWO may verify a wager or account transaction as authorized by the licensee account holder.

“Show” means a runner finishing third.

“Show pool” means the total amount of money wagered on all betting interests in each contest to finish either first, second or third.

“Source market fee” or *“host fee”* means the part of a wager that is made on any race by a person who is a licensee account holder and that is returned to the licensee and the Iowa Horsemen’s Benevolent and Protective Association pursuant to the terms of a negotiated agreement as required by 491—8.6(99D).

“Steward” means a racing official appointed or approved by the commission to perform the supervisory and regulatory duties relating to pari-mutuel racing.

“Superfecta” means a wager selecting the exact order of finish for first, second, third, and fourth in that contest and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

“Totalizator” means a machine for registering wagers and computing odds and payoffs based upon data supplied by each pari-mutuel ticket-issuing machine.

“Trifecta” means a wager selecting the exact order of finish for first, second, and third in that race and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

“Tri-superfecta” means a wager selecting the exact order of finish for first, second and third in the first designated tri-super contest combined with selecting the exact order of finish for first, second, third and fourth in the second designated tri-super contest.

“Twin quinella” means a wager in which the bettor selects the first two finishers, regardless of order, in each of two designated contests. Each winning ticket for the twin quinella must be exchanged for a free ticket on the second twin quinella contest in order to remain eligible for the second-half twin quinella pool.

“Twin superfecta” means a wager in which the bettor selects the first four finishers, in their exact order, in each of two designated contests. Each winning ticket for the first twin superfecta contest must be exchanged for a free ticket on the second twin superfecta contest in order to remain eligible for the second-half twin superfecta pool.

“Twin trifecta” means a wager in which the bettor selects the three runners that will finish first, second, and third in the exact order as officially posted in each of the two designated twin trifecta races.

“Underpayment” means when the payoff to the public resulting from errors in calculating pools and errors occurring in the communication in payoffs results in less money returned to the public than is actually due.

“Win” means a runner finishing first.

“Win pool” means the total amount wagered on all betting interests in each contest to finish first.

“Withdrawal” means a payment of money from an account by the licensee or ADWO to the licensee account holder when properly requested by the licensee account holder.

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491—8.2(99D) General.

8.2(1) *Wagering.* Each facility shall conduct wagering in accordance with applicable laws and these rules. Such wagering shall employ a pari-mutuel system approved by the commission. The totalizator shall be tested prior to and during the meeting as required by the commission. Annually, the facility shall have an external audit, approved by the administrator, of the totalizator system. All systems of wagering other than pari-mutuel, such as bookmaking and auction-pool selling, are prohibited, and any person attempting to participate in prohibited wagering shall be ejected or excluded from facility grounds.

8.2(2) *Records.* The facility shall maintain records of all wagering so the commission may review such records for any contest including the opening line, subsequent odds fluctuation, the amount and at which window wagers were placed on any betting interest and such other information as may be required. Such wagering records shall be retained by each facility and safeguarded for a period of time specified by the commission. The commission may require that certain of these records be made available to the wagering public at the completion of each contest.

The facility shall provide the commission with a list of the licensed individuals afforded access to pari-mutuel records and equipment at the wagering facility.

8.2(3) *Pari-mutuel tickets.* A pari-mutuel ticket is evidence of a contribution to the pari-mutuel pool operated by the facility and is evidence of the obligation of the facility to pay to the holder thereof such portion of the distributable amount of the pari-mutuel pool as is represented by such valid pari-mutuel ticket. The facility shall cash all valid winning tickets when such are presented for payment during the course of the meeting where sold and for a specified period after the last day of the meeting as provided in paragraph 8.2(4) "g."

a. To be deemed a valid pari-mutuel ticket, such ticket shall have been issued by a pari-mutuel ticket machine operated by the facility and recorded as a ticket entitled to a share of the pari-mutuel pool and contain imprinted information as to:

- (1) The name of the facility operating the meeting.
- (2) A unique identifying number or code.
- (3) Identification of the terminal at which the ticket was issued.
- (4) A designation of the performance for which the wagering transaction was issued.
- (5) The contest number for which the pool is conducted.
- (6) The type(s) of wagers represented.
- (7) The number(s) representing the betting interests for which the wager is recorded.
- (8) The amount(s) of the contributions to the pari-mutuel pool or pools for which the ticket is evidence.

b. No pari-mutuel ticket recorded or reported as previously paid, canceled, or nonexistent shall be deemed a valid pari-mutuel ticket by the facility. The facility may withhold payment and refuse to cash any pari-mutuel ticket deemed not valid, except as provided in paragraph 8.2(4) "e."

8.2(4) *Pari-mutuel ticket sales.*

a. Pari-mutuel tickets shall not be sold by anyone other than a facility licensed to conduct pari-mutuel wagering.

b. No pari-mutuel ticket may be sold on a contest for which wagering has already been closed, and no facility shall be responsible for ticket sales entered into but not completed by issuance of a ticket before the totalizator is closed for wagering on such contest.

c. Claims pertaining to a mistake on an issued or unissued ticket must be made by the bettor prior to leaving the seller's window.

d. Payment on winning pari-mutuel wagers shall be made on the basis of the order of finish as purposely posted and declared "official." Any subsequent change in the order of finish or award of purse money(s) as may result from a subsequent ruling by the stewards or administrator shall in no way affect the pari-mutuel payoff. If an error in the posted order of finish or payoff figures is discovered, the official order of finish or payoff prices may be corrected and an announcement concerning the change shall be made to the public.

e. The facility shall not satisfy claims on lost, mutilated, or altered pari-mutuel tickets without authorization from the administrator.

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f. The facility shall have no obligation to enter a wager into a betting pool if unable to do so due to equipment failure.

g. Payment on valid pari-mutuel tickets shall be made only upon presentation and surrender to the facility where the wager was made within 60 days following the close of the meeting during which the wager was made. Failure to present any such ticket within 60 days shall constitute a waiver of the right to receive payment.

8.2(5) *Advance performance wagering.* No facility shall permit wagering to begin more than one hour before scheduled post time of the first contest of a performance unless it has first obtained the authorization of the administrator.

8.2(6) *Claims for payment from pari-mutuel pool.* At a designated location, a written, verified claim for payment from a pari-mutuel pool shall be accepted by the facility in any case where the facility has withheld payment or has refused to cash a pari-mutuel wager. The claim shall be made on such form as approved by the administrator, and the claimant shall make such claim under penalty of perjury. The original of such claim shall be forwarded to the administrator within 48 hours.

a. In the case of a claim made for payment of a mutilated pari-mutuel ticket which does not contain the total imprinted elements required in paragraph 8.2(3) “*a*” of these general provisions, the facility shall make a recommendation to accompany the claim forwarded to the administrator as to whether or not the mutilated ticket has sufficient elements to be positively identified as a winning ticket.

b. In the case of a claim made for payment on a pari-mutuel wager, the administrator shall adjudicate the claim and may order payment thereon from the pari-mutuel pool or by the facility, may deny the claim, or may make such other order as the administrator may deem proper.

8.2(7) *Payment for errors.* If an error occurs in the payment amounts for pari-mutuel wagers which are cashed or entitled to be cashed, and as a result of such error the pari-mutuel pool involved in the error is not correctly distributed among winning ticket holders, the following shall apply:

a. Verification is required to show that the amount of the commission, the amount in breakage, and the amount in payoffs are equal to the total gross pool. If the amount of the pool is more than the amount used to calculate the payoff, the underpayment shall be added to the corresponding pool of the next contest. If an underpayment is discovered after the close of the meeting, the underpayment shall be held in an interest-bearing account approved by the administrator until being added, together with accrued interest, to the corresponding pool of the next meet.

b. Any claim not filed with the facility within 30 days, inclusive of the date on which the underpayment was publicly announced, shall be deemed waived, and the facility shall have no further liability therefor.

c. In the event the error results in an overpayment to winning wagers, the facility shall be responsible for such payment.

8.2(8) *Betting explanation.* A summary explanation of pari-mutuel wagering and each type of betting pool offered shall be published in the program for every wagering performance. The rules of racing relative to each type of pari-mutuel pool offered must be prominently displayed on facility grounds and available upon request through facility representatives.

8.2(9) *Display of betting information.*

a. Approximate odds for win pool betting shall be posted on display devices within view of the wagering public and updated at intervals of not more than 90 seconds.

b. The probable payoff or amounts wagered, in total and on each betting interest, for other pools may be displayed to the wagering public at intervals and in a manner approved by the administrator.

c. Official results and payoffs must be displayed upon each contest being declared official.

8.2(10) *Canceled contests.* If a contest is canceled or declared “no contest,” refunds shall be granted on valid wagers in accordance with these rules.

8.2(11) *Refunds.*

a. Notwithstanding other provisions of these rules, refunds of the entire pool shall be made on:

(1) Win pools, exacta pools, and first-half double pools offered in contests in which the number of betting interests has been reduced to fewer than two.

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(2) Place pools, quinella pools, trifecta pools, first-half quinella double pools, first-half twin quinella pools, first-half twin trifecta pools, and first-half tri-superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than three.

(3) Show pools, superfecta pools, and first-half twin superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than four.

b. Authorized refunds shall be paid upon presentation and surrender of the affected pari-mutuel ticket.

8.2(12) *Coupled entries and mutuel fields.*

a. Contestants coupled in wagering as a coupled entry or mutuel field shall be considered part of a single betting interest for the purpose of price calculations and distribution of pools. Should any contestant in a coupled entry or mutuel field be officially withdrawn or scratched, the remaining contestants in that coupled entry or mutuel field shall remain valid betting interests and no refunds will be granted. If all contestants within a coupled entry or mutuel field are scratched, then tickets on such betting interests shall be refunded, notwithstanding other provisions of these rules.

b. For the purpose of price calculations only, coupled entries and mutuel fields shall be calculated as a single finisher, using the finishing position of the leading contestant in that coupled entry or mutuel field to determine order of placing. This rule shall apply to all circumstances, including situations involving a dead heat, except as otherwise provided by these rules.

8.2(13) *Pools dependent upon betting interests.* Unless the administrator otherwise provides, at the time the pools are opened for wagering, the facility:

a. May offer win, place, and show wagering on all contests with six or more betting interests.

b. May prohibit show wagering on any contest with five or fewer betting interests scheduled to start.

c. May prohibit place wagering on any contest with four or fewer betting interests scheduled to start.

d. May prohibit quinella wagering on any contest with three or fewer betting interests scheduled to start.

e. May prohibit quinella double wagering on any contests with three or fewer betting interests scheduled to start.

f. May prohibit exacta wagering on any contest with three or fewer betting interests scheduled to start.

g. Shall prohibit trifecta wagering on any contest with five or fewer betting interests scheduled to start, or as provided in (1) below:

(1) Cancel trifecta. The stewards have the authority to cancel trifecta wagering at any time they determine an irregular pattern of wagering or determine that the conduct of the race would not be in the interest of the regulation of the pari-mutuel wagering industry or in the public confidence in racing. The stewards may approve smaller fields for trifecta wagering if extraneous circumstances are shown by the facility.

(2) Reserved.

h. May prohibit superfecta wagering on any contest with seven or fewer betting interests scheduled to start.

i. May prohibit twin quinella wagering on any contests with three or fewer betting interests scheduled to start.

j. May prohibit twin trifecta wagering on any contests with seven or fewer betting interests scheduled to start, except as provided in subparagraph 8.2(13)“g”(1).

k. May prohibit tri-superfecta wagering on any contests with seven or fewer betting interests scheduled to start.

l. May prohibit twin superfecta wagering on any contests with seven or fewer betting interests scheduled to start.

8.2(14) *Prior approval required for betting pools.*

a. A facility that desires to offer new forms of wagering must apply in writing to the administrator and receive written approval prior to implementing the new betting pool.

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b. The facility may suspend previously approved forms of wagering with the prior approval of the administrator. Any carryover shall be held until the suspended form of wagering is reinstated. A facility may request approval of a form of wagering or separate wagering pool for specific requirements.

8.2(15) *Closing of wagering in a contest.*

a. All wagering shall stop and all pari-mutuel machines shall be locked at post time or at the actual start of the races. Machines shall be automatically locked, unless unusual circumstances dictate that the stewards act differently.

b. The facility shall maintain, in good order, a system approved by the administrator for closing wagering.

8.2(16) *Complaints pertaining to pari-mutuel operations.*

a. When a patron makes a complaint to a facility regarding the mutuel department, the facility shall immediately issue a complaint report, setting out:

- (1) The name of the complainant;
- (2) The nature of the complaint;
- (3) The name of the persons, if any, against whom the complaint was made;
- (4) The date of the complaint;
- (5) The action taken or proposed to be taken, if any, by the facility.

b. The facility shall submit every complaint report to the commission within five days after the complaint was made.

8.2(17) *Facility/vendor employees.* All facility/vendor employees shall report immediately to the administrator any known irregularities or wrongdoings by any person involving pari-mutuel wagering and shall cooperate in subsequent investigations.

8.2(18) *Unrestricted access.* The facility shall permit the commission unrestricted access at all times to its facilities and equipment and to all books, ledgers, accounts, documents and records of the facility that relate to pari-mutuel wagering.

8.2(19) *Totalizator breakdown.* In the event of irreparable breakdown of the totalizator during the wagering on a race, the wagering on that race shall be declared closed and the payoff shall be computed on the sums wagered in each pool up to the time of the breakdown.

8.2(20) *Minimum wager and payoff.* The minimum wager to be accepted by any licensed facility for win, place and show wagering shall be \$2. The minimum payoff on a \$2 wager shall be \$2.20. For all other wagers, the minimum wager to be accepted by any licensed facility shall be \$1. The minimum payoff for a \$1 wager shall be \$1.10. Any deviation from these minimums must be approved by the administrator. In cases where a minus pool occurs, the facility is responsible for the payment of the minimum payoff and no breakage shall be incurred from that pari-mutuel pool.

8.2(21) *Minors prohibited from wagering.* No minor shall be permitted by any licensed facility to purchase or cash a pari-mutuel ticket.

8.2(22) *Emergency situations.* In the event of an emergency in connection with the mutuel department not covered in these rules, the pari-mutuel manager representing the facility shall report the problem to the stewards, and the stewards shall render a full report to the administrator or administrator's designee within 48 hours.

8.2(23) *Commission mutuel supervisor.* The commission may employ a mutuel supervisor with accounting experience to serve as the commission's designated representative at each race meeting as provided in Iowa Code section 99D.19. In the absence of a specifically appointed commission mutuel supervisor, the board of stewards or simulcast steward will perform the functions and duties of the commission.

491—8.3(99D) Approval of pari-mutuel wagers.

8.3(1) *Pools permitted.* All pari-mutuel wagering pools approved by the commission shall be separately and independently calculated and distributed. Takeout shall be deducted from each gross pool as stipulated by Iowa Code section 99D.11. The remainder of the moneys in the pool shall constitute the net pool for distribution as payoff on winning wagers.

RACING AND GAMING COMMISSION[491](cont'd)

8.3(2) *Pari-mutuel wagering submissions.* Prior to conducting a new pari-mutuel wager, a facility shall submit proposals for the wager including, but not limited to, the wager type, calculation of payoff, refunds and distribution of pools. The wager submission, or requests for modification to an approved wager, shall be in writing and approved by the administrator or an administrator's designee prior to implementation.

8.3(3) *Public notice.* The public shall have access to the wagering rules and the calculation of payoffs and distribution of pools which are approved by the commission. Signage shall be conspicuously posted in the wagering area to direct patrons to the wagering area where this information can be viewed.

491—8.4(99D) Simulcast wagering.

8.4(1) *General.*

a. Rules. All simulcasting must be transmitted live, and all wagering on simulcasting shall be made in accordance with the commission rules on pari-mutuel wagering. Commission rules in effect during live racing shall remain in effect during simulcasting where applicable.

b. Transmission. The method used to transmit sales transaction and data including, but not limited to, the odds, will pay, race results, and payoff prices must be approved by the commission, based upon the determination that provisions to secure the system and transmission are satisfactory.

c. Communication. A communication system between the host track and the receiving facility must be provided which will allow the totalizator operator and the commission representatives at the host track to communicate with the facility receiving the signal. The facility is responsible during the racing program's operating hours for reporting any problems or delays to the public.

d. Approval.

(1) All simulcasting, both interstate and intrastate, must be preapproved by the commission or commission representative. Each facility conducting simulcasting shall submit an annual written simulcast proposal to the commission with the application for license renewal required by 491—Chapter 1.

(2) The commission representative, upon written request, may grant modifications to the annual simulcast proposal. The commission representative may approve or disapprove simulcast requests at the representative's discretion. Factors that may be considered include, but are not limited to, economic conditions of a facility, impact on other facilities, impact on the Iowa breeding industry, other gambling in the state, and any other considerations the commission representative deems appropriate.

(3) Once simulcast authority has been granted by the commission or commission representative, it shall be the affirmative responsibility of the facility granted simulcast authority to obtain all necessary permission from other states and tracks to simulcast the pari-mutuel races. In addition, the burden of adhering to state and federal laws concerning simulcasting rests on the facility at all times.

8.4(2) *Simulcast host.*

a. Every host facility, if requested, may contract with an authorized receiver for the purpose of providing authorized users its simulcast. All contracts governing participation in interstate or intrastate pools shall be submitted to the commission representative for prior approval. Contracts shall be of such content and in such format as required by the commission representative.

b. A host facility is responsible for the content of the simulcast and shall use all reasonable effort to present a simulcast which offers the viewers an exemplary depiction of each performance.

c. Unless otherwise permitted by the commission representative, every simulcast will contain in its video content a digital display of actual time of day, the name of the host facility from which the simulcast originates, the number of the contest being displayed, and any other relevant information available to patrons at the host facility.

d. The host facility shall maintain such security controls, including encryption over its uplink and communications systems, as directed or approved by the commission or commission representative.

e. Financial reports shall be submitted daily or as otherwise directed by the commission representative. Reports shall be of such content and in such format as required by the commission representative.

RACING AND GAMING COMMISSION[491](cont'd)

8.4(3) Authorized receiver.

a. An authorized receiver shall provide:

(1) Adequate transmitting and receiving equipment of acceptable broadcast quality which shall not interfere with the closed circuit TV system of the host facility for providing any host facility patron information.

(2) Pari-mutuel terminals, pari-mutuel odds displays, modems and switching units enabling pari-mutuel data transmissions, and data communications between the host and guest facilities.

(3) A voice communication system between each guest facility and the host facility providing timely voice contact among the commission representative, placing judges, and mutuel departments.

b. The guest facility and all authorized receivers shall conduct pari-mutuel wagering pursuant to the applicable commission rules.

c. Not less than 30 minutes prior to the commencement of transmission of the performance of pari-mutuel contests, the guest facility shall initiate a test program of its transmitter, encryption and decoding, and data communication to ensure proper operation of the system.

d. The guest facility shall, in conjunction with the host facility(ies) for which it operates pari-mutuel wagering, provide the commission representative with a certified report of its pari-mutuel operations as directed by the commission representative.

e. Every authorized receiver shall file with the commission an annual report of its simulcast operations and an audited financial statement.

f. The mutuel manager shall notify the commission representative when the transfer of pools, pool totals, or calculations are in question, or if partial or total cancellations occur, and shall suggest alternatives for continued operation. Should loss of video signal occur, wagering may continue with approval from the commission representative.

491—8.5(99D) Interstate common-pool wagering.**8.5(1) General.**

a. All contracts governing participation in interstate common pools shall be submitted to the commission representative for prior approval. Financial reports shall be submitted daily or as otherwise directed by the commission representative. Contracts and reports shall be of such content and in such format as required by the commission representative.

b. Individual wagering transactions are made at the point of sale in the state where placed. Pari-mutuel pools are combined for computing odds and calculating payoffs but will be held separate for auditing and all other purposes.

c. Any surcharges or withholdings in addition to the takeout shall be applied only in the jurisdiction otherwise imposing such surcharges or withholdings.

d. In determining whether to approve an interstate common pool which does not include the host facility or which includes contests from more than one facility, the commission representative shall consider and may approve use of a bet type which is not utilized at the host facility, application of a takeout rate not in effect at the host facility, or other factors which are presented to the commission representative.

e. The content and format of the visual display of racing and wagering information at facilities in other jurisdictions where wagering is permitted in the interstate common pool need not be identical to the similar information permitted or required to be displayed under these rules.

8.5(2) Guest state participation in interstate common pools.

a. With the prior approval of the commission representative, pari-mutuel wagering pools may be combined with corresponding wagering pools in the host state or with corresponding pools established by one or more other jurisdictions.

b. The commission representative may permit adjustment of the takeout from the pari-mutuel pool so that the takeout rate in this jurisdiction is identical to that of the host facility or identical to that of other jurisdictions participating in a merged pool.

c. When takeout rates in the merged pools are not identical, the net-price calculation shall be the method by which the differing takeout rates are applied.

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- d.* Rules established in the state of the host facility designated for a pari-mutuel pool shall apply.
- e.* The commission representative shall approve agreements made between the facility and other participants in interstate common pools governing the distribution of breakage between the jurisdictions.
- f.* If, for any reason, it becomes impossible to successfully merge the bets placed into the interstate common pool, the facility shall make payoffs in accordance with payoff prices that would have been in effect if prices for the pool of bets were calculated without regard to wagers placed elsewhere, except that, with the permission of the commission representative, the facility may alternatively determine either to pay winning tickets at the payoff prices at the host facility or to declare such accepted bets void and make refunds in accordance with the applicable rules.

8.5(3) *Host state participation in merged pools.*

- a.* With the prior approval of the commission representative, a facility licensed to conduct pari-mutuel wagering may determine that one or more of its contests be utilized for pari-mutuel wagering at guest facilities in other states and may also determine that pari-mutuel pools in guest states be combined with corresponding wagering pools established by it as the host facility or comparable wagering pools established by two or more states.
- b.* When takeout rates in the merged pool are identical, the net-price calculation shall be the method by which the differing takeout rates are applied.
- c.* Rules of racing established for races held in this state shall also apply to interstate common pools unless the commission representative specifically determines otherwise.
- d.* The commission representative shall approve agreements made between the facility and other participants in interstate common pools governing the distribution of breakage between the jurisdictions.
- e.* Any contract for interstate common pools entered into by the facility shall contain a provision to the effect that if, for any reason, it becomes impossible to successfully merge the bets placed in another state into the interstate common pool formed by the facility or if, for any reason, the commission representative or facility determines that attempting to effect transfer of pool data from the guest state may endanger the facility's wagering pool, the facility shall have no liability for any measure taken which may result in the guest's wagers not being accepted into the pool.

8.5(4) *Takeout rates in interstate common pools.*

- a.* With the prior approval of the commission representative, a facility wishing to participate in an interstate common pool may change its takeout rate so as to achieve a common takeout rate with all other participants in the interstate common pool.
- b.* A facility wishing to participate in an interstate common pool may request that the commission representative approve a methodology whereby host facility and guest facility states with different takeout rates for corresponding pari-mutuel pools may effectively and equitably combine wagers from the different states into an interstate common pool.

491—8.6(99D) Advance deposit wagering.**8.6(1) *Authorization to conduct advance deposit wagering.***

- a.* A licensee may request authorization from the commission to conduct advance deposit wagering pursuant to Iowa Code section 99D.11(6) "c" and these rules. As part of the request, the licensee shall submit a detailed plan of how its advance deposit wagering system would operate. The commission may require changes in a proposed plan of operations as a condition of granting a request. No subsequent changes in the system's operation may occur unless ordered by the commission or until approval is obtained from the commission after it receives a written request.
- b.* The commission may conduct investigations or inspections or request additional information from the licensee as the commission deems appropriate in determining whether to allow the licensee to conduct advance deposit wagering.
- c.* The licensee shall establish and manage an advance deposit wagering center.
- d.* The commission may issue an ADWO license to an entity that enters into an agreement with the commission, the licensee, and the Iowa Horsemen's Benevolent and Protective Association. The terms of any ADWO's license shall include but not be limited to:

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- (1) Any source market fees and host fees to be paid on any races subject to advance deposit wagering.
- (2) An annual ADWO license fee in an amount to be determined by the commission.
- (3) Completion of all necessary background investigations.
- (4) Acceptance of wagers on live races conducted at the horse racetrack in Polk County from all of its licensee account holders.
- (5) A bond or irrevocable letter of credit on behalf of the ADWO to be determined by the commission.
- (6) A detailed description and certification of systems and procedures used by the ADWO to validate the identity and age of licensee account holders and to validate the legality of wagers accepted.
- (7) Certification of prompt commission access to all records relating to licensee account holder identity and age in hard-copy or standard electronic format acceptable to the commission.
- (8) Certification of secure retention of all records related to advance deposit wagering and accounts for a period of not less than three years or such longer period as specified by the commission.
- (9) Utilization and communication of pari-mutuel wagers to a pari-mutuel system meeting all requirements for pari-mutuel systems employed by licensed racing facilities in Iowa.

e. Commission access to and use of information concerning advance deposit wager transactions and licensee account holders shall be considered proprietary, and such information shall not be disclosed publicly except as may be required pursuant to statute or court order or except as part of the official record of any proceeding before the commission. This requirement shall not prevent the sharing of this information with other pari-mutuel regulatory authorities or law enforcement agencies for investigative purposes.

f. For each advance deposit wager made for an account by telephone, the licensee or ADWO shall make a voice recording of the entire transaction and shall not accept any such wager if the voice-recording system is inoperable. Voice recordings shall be retained for not less than six months and shall be made available to the commission for investigative purposes.

8.6(2) *Establishing an account.*

a. A person must have an established account in order to place advance deposit wagers. An account may be established in person at the licensee's facility or with the ADWO by mail or electronic means. For establishing an account, the application must be signed or otherwise authorized in a manner acceptable to the commission and shall include the applicant's full legal name, principal residence address, telephone number, and date of birth and any other information required by the commission.

b. Each application submitted will be subject to electronic verification with respect to the applicant's name, principal residence address and date of birth by either a national, independent individual reference service company or by means of a technology which meets or exceeds the reliability, security, accuracy, privacy and timeliness provided by individual reference service companies. An applicant's social security number may be necessary for completion of the verification process and for tax-reporting purposes. If there is a discrepancy between the application submitted and the information provided by the electronic verification or if no information on the applicant is available from such electronic verification, another individual reference service may be accessed or another technology meeting the requirements described above may be used to verify the information provided. If these measures prove unsatisfactory, then the applicant will be contacted and given instructions as to how to resolve the matter.

c. The identity of a licensee account holder must be verified via electronic means or copies of other documents before the licensee account holder may place an advance deposit wager.

d. Each account shall have a unique identifying account number. The identifying account number may be changed at any time by the licensee or ADWO provided that the licensee or ADWO informs the licensee account holder in writing prior to the change.

e. The applicant shall provide the licensee or ADWO with an alpha-numeric code to be used as a secure personal identification code when the licensee account holder is placing an advance deposit wager. The licensee account holder has the right to change this code at any time.

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f. The licensee account holder shall receive at the time the account is approved a unique account identification number; a copy of the advance deposit wagering rules and such other information and material pertinent to the operation of the account; and such other information as the licensee, ADWO or commission may deem appropriate.

g. The account is nontransferable.

h. The licensee or ADWO may close or refuse to open an account for what it deems good and sufficient reason and shall order an account closed if it is determined that information used to open an account was false or that the account has been used in violation of these rules or the licensee's or ADWO's terms and conditions.

8.6(3) *Operation of an account.* The ADWO shall submit operating procedures with respect to licensee account holder accounts for commission approval.

These rules are intended to implement Iowa Code chapter 99D.

ITEM 14. Rescind and reserve **491—Chapter 9.**

ITEM 15. Rescind paragraph **10.4(1)“f.”**

ITEM 16. Reletter paragraphs **10.4(1)“g”** to **“o”** as **10.4(1)“f”** to **“n.”**

ITEM 17. Amend subparagraph **10.4(4)“a”(6)** as follows:

(6) General enforcement provisions. Stewards shall enforce the laws of Iowa and the rules of the commission. The laws of Iowa and the rules of racing apply equally during periods of racing. They supersede the conditions of a race and the regulations of a racing meet and, in matters pertaining to racing, the orders of the stewards supersede the orders of the officers of the facility. The decision of the stewards as to the extent of a disqualification of any horse in any race shall be final for purposes of distribution of the pari-mutuel pool. The administrative standard of review for a disqualification decision is abuse of discretion.

ITEM 18. Amend paragraph **10.4(4)“d”(3)“1”** as follows:

1. Extent of disqualification. Upon any claim of foul submitted to them, the stewards shall determine the extent of any disqualification and place any horse found to be disqualified behind others in the race with which it interfered or may place the offending horse last in the race. The stewards at their discretion may determine if there was sufficient interference or intimidation to affect the outcome of the race and take the appropriate actions thereafter. Abuse of discretion shall be the standard of review used in any appeal involving a steward's disqualification decision.

ITEM 19. Adopt the following new subparagraph **10.5(1)“a”(29)**:

(29) Ensuring that all individuals in their employ are properly licensed by the commission.

ITEM 20. Amend paragraph **11.5(4)“a”** as follows:

a. Proposals. Gambling games of chance involving prizes awarded to participants through promotional activities ~~occurring at a facility~~ shall be authorized and approved by the commission. Before a facility may conduct such gambling games, all proposals for terms, game rules, prizes, dates of operation and procedures for any gambling games of chance involving prizes awarded through promotional activities ~~occurring at a facility~~ shall be submitted in writing to a commission representative for approval. The written submission shall be submitted to the commission representative at least 14 days in advance of the planned activity. Any changes to an approved gambling game of chance involving prizes awarded to participants through promotional activities shall also require the approval of the commission representative. Gambling games of chance involving prizes awarded to participants through promotional activities ~~occurring at a facility~~ shall meet the following requirements:

(1) All rules of play shall be in writing and posted for public inspection;

(2) Such games shall be limited to participants 21 years of age or older;

(3) All games shall be conducted in a fair and honest manner, and all prizes advertised shall be awarded in accordance with the posted rules of play;

(4) All such games shall be conducted within the regulated area of the facility on the gaming floor and shall be conducted in accordance with the submission approved by the commission representative;

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- (5) No entry fees shall be permitted; and
- (6) All employees of the facility shall be prohibited from participation.

[Filed 4/19/13, effective 6/19/13]

[Published 5/15/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/15/13.

ARC 0736C**SECRETARY OF STATE[721]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State hereby amends Chapter 22, "Voting Systems," Iowa Administrative Code.

These amendments are necessary to provide voters with disabilities an opportunity to test and report on new accessible voting equipment before it is certified for use by the Board of Examiners for Voting Systems. Currently, meetings of the Examiners are noticed pursuant to Iowa Code chapter 21 and are open to the public. However, there are no formal procedures in place for the Examiners to receive feedback on the accessibility of new voting systems from interested parties.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin as **ARC 0556C** on January 9, 2013. Public comments were received from the Board of Examiners for Voting Systems who requested that the Examiners be able to proceed with a vote on state certification of a new voting system sooner than 30 days from the date of the examination and test in the event that no interested parties appear to participate in the testing of the new system under the proposed amendment. In response to the comments of the Examiners, these amendments have been updated to allow the Examiners to proceed with a vote on certification of a new system in the event that no interested parties participate in the testing under this amended rule.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 52.26.

These amendments will become effective June 19, 2013.

The following amendments are adopted.

ITEM 1. Adopt the following new subrule 22.9(6):

22.9(6) Accessibility testing by other interested parties. Any party interested in the accessibility of voting equipment that is being considered for state certification may request to be included on notices of meetings of the board of examiners. Requests shall be sent to the examiners, in care of the Elections Division, Office of the Secretary of State, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Any parties present at the meeting may complete accessibility testing on the equipment and submit a report on the accessibility of the voting system to the examiners within 30 days of the date of the examination and test. The report may be made in written or oral form. If an interested party would like to make an oral report, the examiners may hear the report either in person or by conference call organized by the elections division, whichever the examiners prefer.

ITEM 2. Amend rule 721—22.12(52) as follows:

721—22.12(52) Report of findings. The Within 60 days of examining a voting system pursuant to this chapter, the examiners shall complete a report showing their findings. The report shall include a checklist containing all statutory requirements for voting systems and shall indicate whether each requirement applies to the voting system being examined and whether the voting system is compliant or not compliant. The checklist must indicate that all applicable items are compliant with statutory requirements in order for the examiners to find that the voting system may be approved for use.

22.12(1) Accessibility reports. If interested parties are present at the examination and test and participate in accessibility testing of the equipment, the examiners shall wait a minimum of 30 days

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from the date of the examination and test before completing the report required by this rule so that the examiners have sufficient time to receive and review any accessibility reports submitted by interested parties pursuant to subrule 22.9(6).

~~22.12(1)~~ 22.12(2) *Approval ~~permits~~ prior to use.* If the report states that the voting system has been approved for use, the voting system may be adopted for use at elections.

22.12(2) 22.12(3) *Report filed with the secretary of state.* The report shall be filed with the secretary of state. The secretary of state shall retain the vendor's application and other documents submitted pertaining to the certification as long as the voting system remains certified.

[Filed 4/23/13, effective 6/19/13]

[Published 5/15/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/15/13.

ARC 0737C

SOIL CONSERVATION DIVISION[27]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 161A.4(1) and 161C.2(4), the Division of Soil Conservation hereby amends Chapter 10, "Iowa Financial Incentive Program for Soil Erosion Control," and Chapter 12, "Water Protection Practices—Water Protection Fund," Iowa Administrative Code.

The amendments update allocation factors for individual counties for initial distribution of soil conservation funding. The amendments allow additional funding to be used to protect public lakes and set September 1 as the date to recall unobligated funding. Soil and water conservation districts will be required to review the priority ranking system annually and to share the information electronically with IDALS. The amendments also allow funding for water protection practices to be used in combination with other public funds. Additional flexibility is granted by expanding the list of eligible practices and adjusting some of the eligibility criteria.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin as **ARC 0655C** on March 20, 2013. A public hearing was held on April 9, 2013. No comments were received from the public. These amendments are identical to the amendments published under Notice of Intended Action.

After analysis and review of this rule making, no adverse impact on jobs has been found.

These amendments are intended to implement Iowa Code section 161A.2 and Iowa Code chapter 161C.

These amendments will become effective July 1, 2013.

The following amendments are adopted.

ITEM 1. Amend subrules 10.41(2) and 10.41(3) as follows:

10.41(2) Publicly owned lakes. For the approved cost of permanent soil conservation practices on watersheds above publicly owned lakes, a minimum of 5 percent of the amount appropriated is to be set aside for cost sharing at a rate not to exceed 75 percent.

10.41(3) Mandatory program. ~~Five~~ A maximum of 5 percent of the appropriation shall be set aside for cost sharing with landowners or farm operators who are required to install soil erosion control practices as a result of an administrative order from the district to abate complaints filed under Iowa Code section 161A.47.

ITEM 2. Rescind subrules **10.41(8)** and **10.41(9)**.

ITEM 3. Amend paragraph **10.51(1)**"e" as follows:

SOIL CONSERVATION DIVISION[27](cont'd)

e. The following table provides the value of “w” for each district:

Individual Soil and Water Conservation District
Percentage Allocation Factors

W(%) District	W(%) District	W(%) District	W(%) District
1.8 <u>1.7</u> Adair	1.2 Davis	1.0 Jefferson	0.2 Pocahontas*
1.2 <u>1.1</u> Adams	1.3 <u>1.4</u> Decatur	1.1 <u>1.2</u> Johnson	0.7 <u>0.8</u> Polk
1.5 Allamakee	0.8 Delaware	1.2 Jones	1.4 E. Pottawattamie
1.1 Appanoose	0.6 <u>0.5</u> Des Moines	1.4 Keokuk	1.2 W. Pottawattamie
1.4 <u>1.3</u> Audubon	0.4 Dickinson	0.6 <u>0.5</u> Kossuth	1.5 <u>1.6</u> Poweshiek
1.4 <u>1.2</u> Benton	1.9 <u>1.8</u> Dubuque	1.0 Lee	1.6 Ringgold
0.5 <u>0.3</u> Black Hawk*	0.3 <u>0.4</u> Emmet*	1.1 <u>1.0</u> Linn	0.7 Sac
0.5 <u>0.6</u> Boone	1.1 Fayette	0.5 Louisa	0.9 <u>0.8</u> Scott
0.3 Bremer*	0.3 Floyd*	1.1 Lucas	1.7 <u>1.8</u> Shelby
0.4 <u>0.3</u> Buchanan*	0.6 Franklin	0.8 <u>0.9</u> Lyon	1.0 Sioux
0.4 <u>0.5</u> Buena Vista	1.0 Fremont	1.2 Madison	0.6 Story
0.6 Butler	0.4 <u>0.5</u> Greene	1.2 Mahaska	1.5 Tama
0.3 Calhoun*	0.5 Grundy	1.3 Marion	1.7 Taylor
1.2 Carroll	1.5 Guthrie	1.4 <u>1.5</u> Marshall	1.1 Union
1.5 Cass	0.4 Hamilton	1.0 <u>1.1</u> Mills	1.2 Van Buren
1.2 Cedar	0.3 <u>0.4</u> Hancock*	0.3 <u>0.2</u> Mitchell*	1.0 Wapello
0.5 <u>0.4</u> Cerro Gordo	0.7 Hardin	1.2 <u>1.3</u> Monona	1.1 <u>1.2</u> Warren
1.0 Cherokee	1.6 <u>1.7</u> Harrison	1.0 Monroe	1.1 Washington
0.4 Chickasaw	0.9 Henry	1.2 Montgomery	1.4 Wayne
1.2 Clarke	0.4 Howard	0.6 <u>0.5</u> Muscatine	0.3 Webster*
0.3 <u>0.4</u> Clay*	0.2 Humboldt*	0.4 <u>0.5</u> O'Brien	0.5 Winnebago
2.0 Clayton	1.3 Ida	0.3 Osceola*	1.8 <u>2.0</u> Winneshiek
1.2 Clinton	1.4 Iowa	1.5 Page	2.3 <u>2.2</u> Woodbury
2.4 <u>2.5</u> Crawford	1.6 <u>1.7</u> Jackson	0.4 Palo Alto	0.3 <u>0.2</u> Worth*
0.8 Dallas	1.7 <u>1.8</u> Jasper	2.4 Plymouth	0.4 Wright

*The minimum value to be used in determining original allocations to districts shall be 0.4.

ITEM 4. Amend subrule 10.52(2) as follows:

10.52(2) Recall of unobligated funds. Funds that are allocated to districts under this program and are not obligated ~~within three months by September 1~~ shall be recalled by the division and reallocated.

ITEM 5. Amend rule 27—10.60(161A), introductory paragraph, as follows:

27—10.60(161A) Funding rates. The purpose of this division is to establish the funding rates at which the state will fund or share the cost for approved soil conservation practices under the various incentive programs. In all cases, except for the mandatory program, the state's share will be computed using the percentages specified below and the estimated cost, the amended estimated cost, or the actual cost of implementing the practice, whichever is less. Payments under the mandatory program will be based on actual costs. Funds distributed to annual programs for permanent practices may be used in combination with other public funds as long as the maximum cost-share rate realized by the district cooperator does not exceed 75 percent of the total eligible costs.

SOIL CONSERVATION DIVISION[27](cont'd)

ITEM 6. Amend subrule 10.73(6) as follows:

10.73(6) District priorities. Each application for financial incentives shall be evaluated under the priority system adopted by the district for disbursement of allocated funds. The district priority system shall be reviewed annually by the district. The priority system shall be sent electronically to the division for the division's record after the annual review. The priority system shall give consideration to family-operated farms and the public benefit derived. The priority system adopted by the district shall be made available for review at the district office. ~~In establishing its priorities for funds made available beginning July 1, 1983, the district shall also give consideration to the district cooperator's effort to implement Iowa Soil 2000 program requirements.~~

ITEM 7. Amend rule 27—12.50(161C) as follows:

27—12.50(161C) Water protection practices account. This part defines procedures for allocation, recall and reallocation of water protection practices funds to soil and water conservation districts and to the division's reserve fund. ~~These funds shall not be used alone or in combination with other public funds to provide a financial incentive payment greater than 75 percent of the approved cost for practices listed in 12.84(161C), or 50 percent in 12.77(1), 12.77(2) and 12.77(3).~~

ITEM 8. Amend subrule 12.51(2) as follows:

12.51(2) Recall of funds. Any funds allocated in the current fiscal year that the districts have not spent or obligated by June 30 ~~may~~ shall be recalled by the division.

ITEM 9. Amend paragraph **12.63(3)“b”** as follows:

b. Privately owned land not used for agricultural production shall not qualify for water protection practices funds. Windbreaks, streambank and shoreline protection, and stormwater quality best management practices established on privately owned land are eligible whether or not the land is in agricultural production.

ITEM 10. Amend subrule 12.72(5) as follows:

12.72(5) Pasture and hay planting. The practice must include the conversion of land from row crop production to a permanent vegetative cover to control excessive water erosion.

ITEM 11. Adopt the following new subrule 12.72(9):

12.72(9) Stormwater quality best management practices (BMPs). A technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in the most cost-effective manner. BMPs can be either:

a. Nonstructural BMPs, which include a range of pollution prevention, education, or institutional management and development practices designed to limit the conversion of rainfall to runoff and to prevent pollutants from entering runoff at the source of runoff generation; or

b. Structural BMPs, which are engineered and constructed systems that are used to treat the stormwater at either the point of generation or the point of discharge to either the storm sewer system or to receiving waters (e.g., detention ponds or constructed wetlands).

ITEM 12. Rescind subrule **12.73(7).**

ITEM 13. Amend rule 27—12.77(161C), introductory paragraph, as follows:

27—12.77(161C) Cost-share rates. The following cost-share rates shall apply for eligible practices designated in rules 27—12.72(161C) to 27—12.74(161C). These rates represent the maximum allowable cost share provided by state funds. These rates may be used in combination with other public funds to provide a total cost-share rate not to exceed 75 percent of the lesser of the eligible or the estimated cost of installation.

[Filed 4/24/13, effective 7/1/13]

[Published 5/15/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/15/13.